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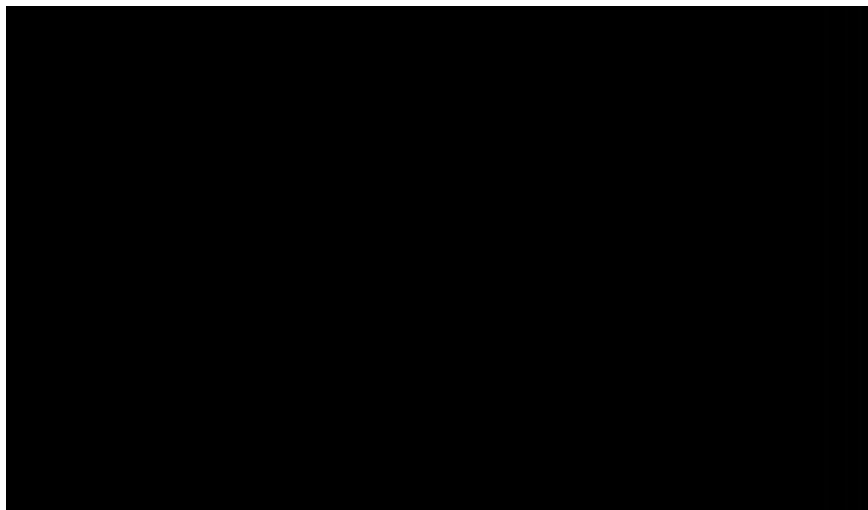
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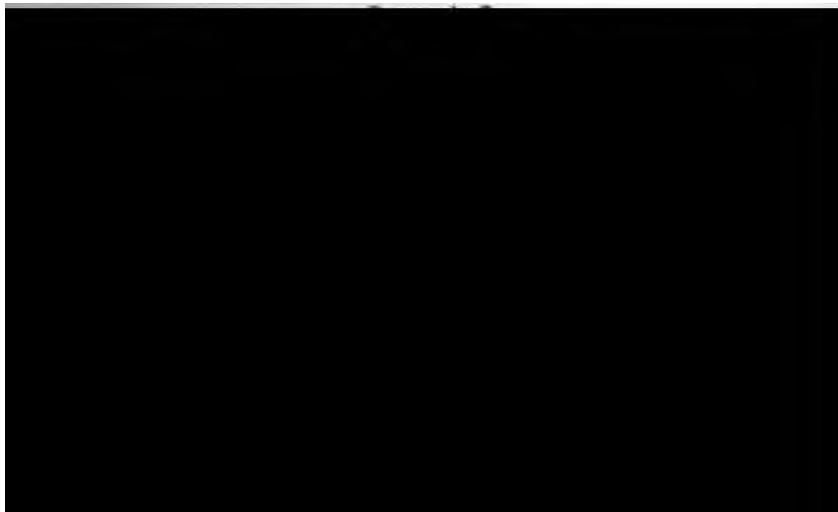
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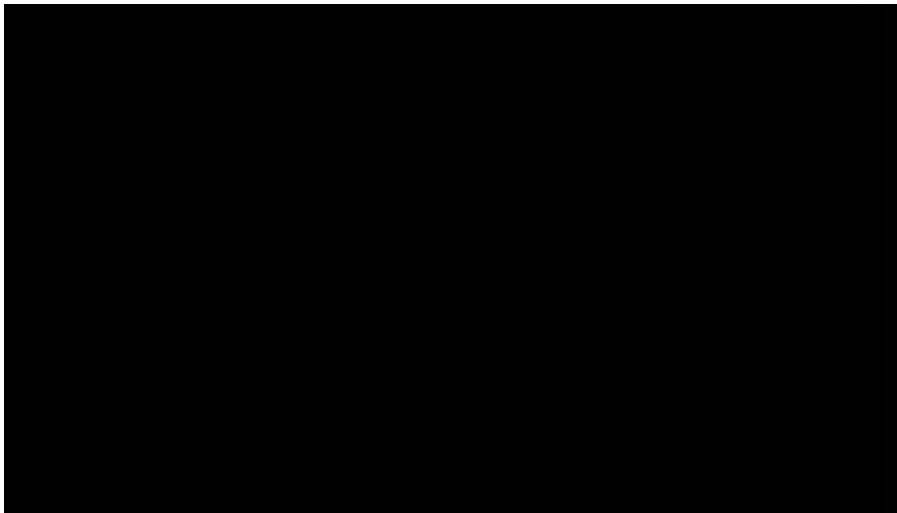
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## APPENDICES TO PART II.

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#### ADMIRALTY FORMS.

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ERRATA AND ADDENDA.

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Page 740, after line twenty from foot of page, make the following addition :—"It is the duty of the Registrar to provide suitors and others, who may be entitled to inspect any instrument or document in an action, with office copies thereof. On this subject 'The County Court Rules, 1875,' provide as follows :—

" " Any person entitled to inspect any instrument or document in  
" " an action shall, on delivering to the Registrar a precipe, and



# A COMPLETE MANUAL OF COUNTY COURT PRACTICE.

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## PART II.

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### BOOK IV.

#### JURISDICTION AND PROCEEDINGS IN ADMIRALTY AND PROBATE MATTERS.

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#### CHAPTER I.

##### THE CONSTITUTION AND OFFICERS OF COUNTY COURTS IN ADMIRALTY.

PREVIOUSLY to the year 1868, the statutory County Courts which (as we have seen (*a*)) were established in the year 1846, had, under "The Merchant Shipping Acts" of 1852 and 1862, acquired a certain very limited jurisdiction in Admiralty matters. Thus, jurisdiction extended only to a power to arrest foreign ships found within the jurisdiction after damaging British property, and to determine disputes as to salvage in cases where the value of the property saved does not exceed £1000. This jurisdiction, such as it is, appears (although the point is not totally free from doubt (*b*)) to be still possessed by all County Courts.

Jurisdiction  
of County  
Courts in  
Admiralty  
matters before  
1868.

In the year 1868, however, an Act of Parliament was passed, by which an extended Admiralty jurisdiction is now exercised, not, it is true, by all County Courts, but by all County Courts selected for that purpose. The Act in question is commonly known and cited as "The County Courts

"The County  
Courts Ad-  
miralty  
Jurisdic-  
tion Act,  
1868."

Short title

(*a*) See *ante*, p. 9 *et seq.*

(*b*) See *infra*, cap. vii. of this Book at p. 800 *et seq.*

of Act to be  
"The County  
Courts Ad-  
miralty  
Jurisdiction  
Act,  
1868."

31 & 32 Vict.  
c. 71, s. 1.

32 & 33 Vict.  
c. 51, s. 1.

County Courts  
Admiralty  
Jurisdiction  
Acts to be  
read as one  
with other  
County Courts  
Acts.

31 & 32 Vict.  
c. 71, s. 34.

32 & 33 Vict.  
c. 51, s. 1.

Scheme of  
legislation  
establishing  
County Courts  
in Admiralty.

31 & 32 Vict.  
c. 71, s. 2.

Admiralty Jurisdiction Act, 1868," under the authority of the following enactment :—

"This Act may be cited as 'The County Courts Admiralty Jurisdiction Act, 1868.'"—31 & 32 Vict. c. 71, s. 1.

In the following year—1869—an Amending Act was passed, section 1 of which enacts :—

"This Act may be cited as 'The County Courts Admiralty Jurisdiction Amendment Act, 1869.'"—32 & 33 Vict. c. 51, s. 1.

The enactments contained in these Acts are, similarly to the other County Courts Acts (*c*), under express provisions contained in the Acts themselves, to be read as one with the other County Courts Acts. The following are the directions to this effect in the Act of 1868 :—

"This Act shall be read as one Act with so much of the 'County Courts Act, 1846,' and the Acts amending or extending the same, as is now in force."—31 & 32 Vict. c. 71, s. 34.

The Act of 1869 similarly provides :—

"This Act may be cited as 'The County Courts Admiralty Jurisdiction Act, 1869,' and shall be read and interpreted as one Act with 'The County Courts Admiralty Jurisdiction Act, 1868.'"—32 & 33 Vict. c. 51, s. 1.

As we have already seen (*d*) was done on the general establishment of County Courts in the year 1846, the scheme of the legislature erecting County Courts in Admiralty was to make provisions by a general enactment for the formation and practice of County Courts in Admiralty, leaving it to the executive what Courts should be constituted County Courts in Admiralty. The following are the enactments by which this was effected :—

"If at any time after the passing of this Act it appears to Her Majesty in Council, on the representation of the Lord Chancellor, expedient that any County Court should have Admiralty jurisdiction, it shall be lawful for Her Majesty, by Order in Council, to appoint that Court to have Admiralty jurisdiction accordingly, and to assign to that Court as its district for Admiralty purposes any part or parts of any one or more district or districts of County Courts; and the district so constituted for that Court, with the parts of the sea (if any) adjacent to that district to a distance of three miles from the shore thereof, shall be deemed its district for Admiralty purposes; and accordingly the Judge and all officers of the Court shall have jurisdiction and authority for those purposes throughout that district, as if the same was the district of the Court for all purposes; and, from a time to be specified in each such order, this Act shall have effect in and throughout the district so constituted; and any such

(c) See *ante*, p. 11 *et seq.*

(d) See *ante*, p. 13 *et seq.*

"order may be from time to time varied as seems expedient ; and a County Court so appointed to have Admiralty jurisdiction, and no other County Court, shall, for the purposes of this Act, be deemed a County Court having Admiralty jurisdiction : Provided that no Judge of a County Court, except the Judges of the London Court, shall have jurisdiction in the City of London."—31 & 32 Vict. c. 71, s. 2.

"From and after the time specified in each Order in Council under this Act appointing a County Court to have Admiralty jurisdiction within any district as the time from which this Act shall have effect in and throughout that district, no County Court, other than the County Court so appointed, shall have jurisdiction within that district in any Admiralty cause ; provided that all Admiralty causes at that time pending in any County Court within that district may be continued as if no such Order in Council had been made (e)." —31 & 32 Vict. c. 71, s. 5.

31 & 32 Vict.  
c. 71, s. 5.

In execution of the power conferred by the sections just set out, an Order in Council, bearing date the 9th December, 1868, appointed certain County Courts to have jurisdiction in Admiralty (f). The Courts so appointed are all on the sea coast. The Order in Council is as follows :—

Certain County  
Courts consti-  
tuted County  
Courts in  
Admiralty.

"That from and after the 31st day of January, 1869, the County Courts mentioned in the first column of the schedule hereto annexed marked 'A' shall have Admiralty jurisdiction ; and Her Majesty is further pleased to assign to the Courts hereby appointed to have Admiralty jurisdiction as their respective districts for Admiralty purposes the districts of the County Courts the names of which are printed in the second column of the said schedule opposite to the names of the said Courts respectively."

Order in  
Council, 9th  
December,  
1868.

With reference to the operation of the two sections of "The County Courts Admiralty Jurisdiction Act," above set out, it is to be noted that the *joint* effect is not merely to give power to appoint, by Order in Council, certain County Courts to have

Effect of the  
above pro-  
visions on  
Admiralty  
powers of

(e) "The Supreme Court of Judicature Act, 1873" (36 & 37 Vict. c. 66), enables Her Majesty from time to time, by order in Council, to confer on any inferior Court of Civil Jurisdiction, the same jurisdiction in Equity and in Admiralty, respectively, as any County Court now has or may hereafter have, s. 88.

(f) It may be noted that "The County Courts Admiralty Jurisdiction Act, 1868," contains the following special provision, relating to the constitution of the Court of Passage of Liverpool as a Court with Admiralty jurisdiction.

"The Court of Passage of the borough of Liverpool shall, upon an Order in Council being made which shall appoint the County Court of Lancashire holden at Liverpool to have Admiralty jurisdiction, have the like jurisdiction, powers, and authorities as by that Order are conferred on the said County Court ; but nothing herein shall be deemed to enlarge the area over which the jurisdiction of the Court of Passage extends, or to alter the rules and regulations for holding the said Court, or to take away or restrict any jurisdiction, power, or authority already vested in that Court ; and fees received in that Court under this Act shall be dealt with as fees received in that Court under its ordinary jurisdiction."—31 & 32 Vict. c. 71, s. 25.

Court of  
Passage at  
Liverpool to  
have Ad-  
miralty juris-  
diction.  
31 & 32 Vict.  
c. 71, s. 25.

Courts not  
selected.

Admiralty jurisdiction, but also to deprive of Admiralty jurisdiction such of the County Courts as are not so appointed. The language of section 5 (*g*) is certainly very comprehensive, and would seem almost to vest in the County Courts specified in the Order in Council, *exclusive* jurisdiction, not only under the Act itself, but also under *previous* enactments conferring a limited Admiralty jurisdiction on County Courts generally. This view is, however, somewhat inconsistent with the language of section 2 (*k*), which, it is to be noticed, provides that "no other County Court shall, *for the purposes of this Act*, be deemed a County Court having Admiralty jurisdiction."

In a recent treatise it is suggested that the effect of section 5 is "to take away, subject to the proviso, all common law jurisdiction as to the claims mentioned in section 3 (*i*), from all County Courts mentioned in the Order in Council, and all such claims seem to be subject to the provisions of "the Act" (*k*).

Power of  
County Courts  
in Admiralty  
to enforce  
their judgments.

It has already been seen (*l*) that every County Court possesses, in respect of its *ordinary* jurisdiction, the power of enforcing its own judgments. A similar power is conferred, in respect of their Admiralty jurisdiction, upon such County Courts as possess this last-named jurisdiction (*m*).

General orders  
to be framed  
regulating  
practice.

The practice of procedure and forms for carrying out the Admiralty jurisdiction of the County Courts is regulated by certain orders, which are directed to be framed by the following sections of "The County Courts Admiralty Jurisdiction Act, 1868" :—

31 & 32 Vict.  
c. 71, s. 35.

"General orders shall be from time to time made under this Act for the purposes in this Act directed, and for regulating the practice and procedure of the Admiralty jurisdiction of the County Courts, the forms of processes and proceedings



"the High Court of Admiralty of England, and, as far as they relate to fees, or to the receipt and expenditure of and accounting for money, with the approval of the commissioners of Her Majesty's Treasury."—31 & 32 Vict. c. 71, s. 36.

cellor and  
Judge of  
Admiralty  
Court.

In pursuance of these sections, a code of orders was framed in 1868. These orders, which were not dated, have been abrogated by "The County Court Rules, 1875," which deal with the practice in Admiralty actions by Order XXXIII.

31 & 32 Vict.  
c. 71, s. 36.

As regards the forms in Admiralty cases, it is to be noticed that the enactment just set out provides also for their regulation. And, accordingly, numerous forms in Admiralty causes are contained in the Schedule to "The County Court Rules, 1875."

Forms.

With regard to the days and places of the sittings of the County Courts for Admiralty purposes, not only have general orders been framed, in pursuance of the enactment just set out, regulating this subject, but another enactment of the same statute ("The County Courts Admiralty Jurisdiction Act, 1868") deals with the same subject. It will be convenient to consider (1.) the time of sittings; and (2.) the place of sittings.

Sittings of  
County Courts  
for Admiralty  
causes.

(1.) As to the *time* of sittings, the Judge is required, by an enactment presently set out (o), to hold his Courts "*as soon as may be after he shall have had notice of an Admiralty cause having arisen within the jurisdiction of the Court.*" And "The County Court Rules, 1875," further provide:—

(1.) Time of  
sittings.

"The days of the sitting of the Court shall be those appointed for the transaction of the ordinary general business of the County Court held in the city or town mentioned in the name of the Court, or such other days as the Judge may from time to time appoint for the trying of an Admiralty action where from the detention of a vessel or otherwise a prompt determination of the action is desirable."—Order XXXIII. r. 3.

Order  
XXXIII.  
rule 3.

(2.) As to the *place* at which the sittings of the Court are to be held, it is provided as follows by "The County Court Admiralty Jurisdiction Act, 1868":—

(2.) The  
place of  
sittings.

"The Judge of every County Court having Admiralty jurisdiction shall hear and determine Admiralty causes at the usual Courts held within his jurisdiction, or at special Courts to be held by him, and which he is hereby required to hold as soon as may be after he shall have had notice of an Admiralty cause having arisen within the jurisdiction of his Court."—31 & 32 Vict. c. 71, s. 13.

31 & 32 Vict.  
c. 71, s. 13.

"The County Court Rules, 1875," moreover, contain the following provisions on the same subject:—

Order  
XXXIII.  
rule 1.

"The Judge may try or partly try the action at any place within the Admiralty jurisdiction of the Court."—Order XXXIII. r. 1.

(o) 31 & 32 Vict. c. 71, s. 13, *infra*.

Order  
XXXIII.  
rule 2.

"Where application is made to the Judge for the trial or part trial of an Admiralty action at a place in which a County Court does not sit, the solicitor shall file a *præcipe* (*p*) undertaking to provide at his expense a place to the satisfaction of the Judge in which the action may be tried, and pay the necessary expenses of the Court and officers so attending".—Order XXXIII. r. 2.

Fees.

"The County Courts Admiralty Jurisdiction Act, 1868," by section 35, already set out (*q*), provides for the regulation of fees. In pursuance of the power therein contained, a Treasury Order, dated 26th Oct., 1875, which has already been set out (*r*), has been framed. This order is made in pursuance of certain therein specified Acts, and also "*of all other powers*," enabling a list of fees to be drawn up. The power contained in section 35 of "The Admiralty Jurisdiction Act, 1868," is included in this latter designation. In Schedule B, Part IV., of this Order, is a list of fees where the Court exercises jurisdiction under "The County Courts Admiralty Jurisdiction Acts, 1868 and 1869."

Inspection of  
records.

The records of the Court are always open to the inspection of the public, subject to payment of a fee. A right to inspect records in a pending action is given to the *partes* by rules set out on a later page (*rr*). The following rule confers a general right of inspection:—

Order  
XXXIII.  
rule 40.

"In an action which is terminated, any person may, on delivering to the registrar a *præcipe*, and on payment of the proper fee, inspect the records in the action."—Order XXXIII. r. 40.

Officers of  
the Court.

The ordinary officers of the County Court (*s*) have jurisdiction and authority in Admiralty causes. On this subject "The County Courts Admiralty Jurisdiction Act, 1868," in a section already set out (*t*), provides as follows:—

"The Judge and all officers of the Court shall have juris-

*nautical* assessors (*a*), or in any Admiralty or Mercantile cause, two *mercantile* assessors (*b*), who shall assist him in determining any such cause.

The registrar issues summonses for service (*c*), and receives payment of the deposit required from a plaintiff who wishes the appointment of assessors (*d*), prepares lists of assessors (*e*), and selects therefrom a certain number of persons to act as assessors (*f*). He also, it is presumed, is the person to keep the Admiralty Actions Book (*g*). Moreover "The County Courts Admiralty Jurisdiction Act, 1868," provides that:—

The registrar.

"The registrar of a County Court shall have power to administer oaths in relation to any Admiralty cause in a County Court; and any person who shall wilfully depose or affirm falsely before the registrar in any Admiralty cause shall be deemed to be guilty of perjury, and shall be liable to all the pains and penalties attaching to wilful and corrupt perjury."

Power to administer oaths.  
31 & 32 Vict. c. 71, s. 19.

—31 & 32 Vict. c. 71, s. 19.

"Evidence taken in any Admiralty cause before the registrar of a County Court, as the Judge of a County Court or general orders shall direct, shall be received as evidence in any other County Court, saving all just exceptions; and the registrar of any County Court shall, for the purpose of the examination of any witnesses within the district of that Court, have all and the like powers and authorities of an examiner of the High Court of Admiralty of England, and evidence taken by him in that capacity shall be received as evidence in the High Court of Admiralty of England, saving all just exceptions."

31 & 32 Vict. c. 71, s. 20.

—31 & 32 Vict. c. 71, s. 20.

This section, it is to be noticed, gives the registrar of the County Court, for the purposes thereby indicated, the like powers and authorities of an examiner of the High Court of Admiralty of England (*h*).

As regards the *remuneration* of County Court officers, "The County Courts Admiralty Jurisdiction Act, 1868," contains the following provision on the subject:—

Remuneration of registrars of County Courts in Admiralty.  
31 & 32 Vict. c. 71, s. 17.

"The registrars of the County Courts shall be remunerated for their duties in Admiralty Causes by receiving for their own use such fees as general orders shall direct."—31 & 32 Vict. c. 71, s. 17.

County Courts in Admiralty, besides what may be termed their regular officers, also have attached to them "assessors."

Assessors.

(*a*) 31 & 32 Vict. c. 71, s. 11, *post*, p. 742.

(*b*) 32 & 33 Vict. c. 51, s. 5, *post*, p. 742.

(*c*) Ord. XXXIII. r. 6, *post*, p. 768.

(*d*) Ord. XXXIII. r. 42, *post*, p. 744.

(*e*) 31 & 32 Vict. c. 71, ss. 14, 15, and 16, *post*, p. 743.

(*f*) Ord. XXXIII. r. 45, *post*, p. 744.

(*g*) Appendix II. Form No. 26f.

(*h*) For the Powers and Authorities of an Examiner see Coote's Admiralty Practice (2nd ed.) p. 63 *et seq.*

Such assessors to County Courts in Admiralty may, it would seem, properly be regarded as "officers" of the Court, inasmuch as they are not selected indiscriminately as occasion may arise, but are from time to time selected quite independently of any pending actions and placed on a list (*i*), on which they remain until a new list is framed (*k*).

Two kinds of assessors.

(1.) Jurisdiction to call in nautical assessors in  
(a.) Salvage;  
(b.) Towage;  
or (c.) Collision cases.

31 & 32 Vict.  
c. 71, s. 10.

31 & 32 Vict.  
c. 71, s. 11.

Assessors in County Courts in Admiralty are of two kinds—viz., *nautical* and *mercantile*.

First : *nautical* assessors may be called in to assist the Judge in certain cases. The cases in which *nautical* assessors may be called in are however only three in number—viz., salvage cases, (2) towage cases, and (3) collision cases. The jurisdiction to call in nautical assessors is contained in the following enactments of "The County Courts Admiralty Jurisdiction Act, 1868"—

"In an Admiralty cause in a County Court the cause shall be heard and determined in like manner as ordinary civil causes are now heard and determined in County Courts; save and except that in any Admiralty cause of salvage, towage, or collision the County Court Judge shall, if he think fit, or on the request of either party to such cause, be assisted by two nautical assessors in the same way as the Judge of the High Court of Admiralty is now assisted by nautical assessors."—31 & 32 Vict. c. 71, s. 10.

"In any such Admiralty cause as last aforesaid, it shall be lawful for the Judge of the County Court, if he think fit, and he shall, upon request of either party, summon to his assistance, in such manner as general orders shall direct, two nautical assessors, and such nautical assessors shall attend and assist accordingly."—31 & 32 Vict. c. 71, s. 11.

(2.) Jurisdic-

Secondly, mercantile assessors may, under "The County

section 5 of "The County Courts Admiralty Jurisdiction Act, 1869," by which the appointment of mercantile assessors is authorised, expressly enacts that "all the provisions of 'The County Courts Admiralty Jurisdiction Act, 1868,' with reference to nautical assessors, shall apply to the appointment, approval, summoning, and remuneration of such mercantile assessors." The following enactments regulate the formation of lists of assessors:—

"The registrar of each County Court having Admiralty jurisdiction shall from time to time frame a list, to be approved by the Judge of the High Court of Admiralty, before whom the same shall be laid by the County Court Judge, and without whose approval it shall have no validity, of assessors, of persons of nautical skill and experience residing or having places of business within the district of the County Court, to act as assessors in that Court, and shall cause the list to be published in the *London Gazette*."—31 & 32 Vict. c. 71, s. 14.

"Every person named in the list of assessors so framed and approved shall attend the County Court under such circumstances, and in such rotation, and subject to such regulations, and shall receive such fees for his attendance, as general orders shall direct, and for every wilful non-attendance shall be liable, at the discretion of the Court, to a penalty not exceeding five pounds."—31 & 32 Vict. c. 71, s. 15.

"Every assessor named in such list shall hold his office until a new list of assessors shall have been framed and approved as aforesaid, or until he shall resign his appointment."—31 & 32 Vict. c. 71, s. 16.

Assessors may, it will be noticed, be summoned under the above enactments, either at the instance of the parties or by desire of the Judge.

Should a party to the action wish for assessors, such party is required (*m*), if he be the plaintiff, on filing his *præcipe* commencing the action (*n*), or, if he be defendant, on filing the *præcipe* to enter appearance, to signify his desire to have the case tried with assessors, and then pay the fees prescribed (*nn*) by the Rules and Orders.

In cases where neither of the parties to the action has demanded assessors, the Judge may, of his own mere motion, direct them to be summoned. And in that case the fees prescribed must, in the absence of special directions, be paid by the plaintiff before the trial (*o*).

Assessors are paid one guinea a day each in cases involving claims not exceeding £100, and two guineas a day each in

By whom assessors may be required.

By the parties.

By the Judge.

Fees to assessors.

(*m*) By Ord. XXXIII. r. 42, *infra*.

(*n*) As to this see *post*, cap. v. p. 768.

(*nn*) Ord. XXXIII. r. 42, *infra*.

(*o*) Ord. XXXIII. r. 43, *infra*.

cases where the claim exceeds £100. Provision for the payment of such fees (there being two assessors in each case) is contained in the rules following:—

Order  
XXXIII.  
rule 42.

“Every solicitor requiring the Judge to be assisted by two assessors shall, at the time of delivering the *præcipe*, pay to the registrar the sum of two guineas if the amount claimed does not exceed £100, and four guineas if it does exceed that amount, and such payments shall be considered as costs in the action, unless otherwise ordered by the Judge.”—Order XXXIII. r. 42.

Order  
XXXIII.  
rule 43.

“Where the Judge requires the assistance of two assessors, the above fees shall be paid by the plaintiff or his solicitor before the trial, and shall be costs in the action, unless otherwise ordered by the Judge.”—Order XXXIII. r. 43.

Order  
XXXIII.  
rule 44.

“Where an action is adjourned, the plaintiff shall pay the assessor's fees for the day of adjournment forthwith after the order of adjournment is made by the Court.”—Order XXXIII. r. 44.

Summons for  
attendance of  
assessors.

When the attendance of assessors is required, the registrar, on the filing of the required *præcipe* by the party, or on the order of the Judge, selects the names of two persons and summons them to attend.

Order  
XXXIII.  
rule 45.

“Upon the delivery of the aforesaid *præcipe* or upon the order of the Judge as last aforesaid, the registrar shall select from the list of assessors the names of two persons whom he may, having reference to the nature of the action to be tried, consider most capable of assisting the Judge in trying and determining it, and shall send to each of such persons by post a summons in the form annexed.”—Order XXXIII. r. 45.

Form of

The form of the summons to an assessor will be found in

## BOOK IV.

### JURISDICTION AND PROCEEDINGS IN ADMIRALTY AND PROBATE MATTERS.

#### CHAPTER II.

##### TRANSFERS OF ADMIRALTY ACTIONS.

IN the preceding Chapter the constitution of County Courts in Admiralty has been fully discussed. It is now necessary, before discussing the practice in such Courts, to consider what powers exist of transferring an action commenced in a County Court in Admiralty into the High Court of Justice, and of transferring Admiralty actions pending in the High Court of Justice into one of the County Courts in Admiralty.

Power of transfer to or from County Courts in Admiralty.

With reference to the power of the High Court to transfer an Admiralty action pending in that Court into a County Court in Admiralty, very few observations will suffice. As we have seen (a), a section in the Judicature Act, 1873 (b), provides that the enactments contained in the seventh, eighth, and tenth sections of "The County Courts Act, 1867," shall be applicable to all actions pending in the Court in which any relief is sought which could be obtained in a County Court. The sections just named all contain powers of transfer. And consequently it would appear that wherever an Admiralty action is pending in the High Court, seeking relief which could have been obtained in a County Court, there now exists a power to transfer such action into a County Court. In practice, however, it is believed that this power of transfer is never exercised. The practice in any case in which it may be sought to obtain such a transfer will of course be the same as in other cases of transfer under "The County Courts Act, 1867," and for the details of such practice reference must be made to that portion of this work in which the proceedings have been fully explained (c).

Transfer of Admiralty actions from High Court to County Court in Admiralty.

Admiralty actions commenced in a County Court in Admiralty are, on the other hand, not unfrequently transferred from such County Court in Admiralty into the High Court of

Transfer of Admiralty actions from County Court

(a) *Ante*, p. 702.

(b) 36 & 37 Vict. c. 66, s. 67.

(c) See *ante*, Book III. cap. iv. p. 701, *et seq.*

in Admiralty to the High Court or to another County Court.

Orders for transfer may be made :

- (1.) By order of the High Court ; or
- (2.) By order of a County Court.

Justice. And, moreover, not only may an Admiralty action pending in a County Court, constituted as mentioned in the last chapter, be transferred into the High Court of Justice, but it may also be transferred into another County Court.

An order for the transfer of an Admiralty action to another County Court can only be made by a County Court. But an order for a transfer to the High Court may be made either (1.) By the High Court, or (2.) By a County Court. It thus becomes convenient to consider separately (1.) Transfers made under the order of the High Court ; (2.) Transfers made by order of a County Court.

#### SECTION I. TRANSFERS UNDER ORDERS OF THE HIGH COURT OF JUSTICE.

High Court of Justice may order transfer of Admiralty action into that Court from a County Court in Admiralty or *vice versa*.

Power of High Court to transfer Admiralty action into High Court.

The High Court of Justice has power both to order a transfer of an action into that Court from a County Court in Admiralty or, on the other hand, as we have just seen (*d*), to order an Admiralty action pending in such High Court to be transferred into a County Court in Admiralty.

The power of the High Court to transfer an Admiralty action from a County Court into such High Court is conferred by "The County Court Admiralty Jurisdiction Act, 1868," which enacts as follows :—

"The High Court of Admiralty of England, on motion by  
 "any party to an Admiralty cause pending in a County Court,  
 "may, if it shall think fit, with previous notice to the other  
 "party, transfer the cause to the High Court of Admiralty,  
 "and may order security for costs, or impose such other terms  
 "as to the Court may seem fit."—31 & 32 Vict. c. 71, s. 6.

31 & 32 Vict.



be exercised in a suit of the last mentioned description, must, it is submitted, depend upon whether "The County Courts Admiralty Jurisdiction Act Amendment Act, 1869," enables the County Courts to entertain such a suit. For if such a suit cannot be entertained by the County Court, because the Court of Admiralty has no original jurisdiction over it, then, it is submitted, that no power of transferring such a suit is exerciseable by the Admiralty Division. As will be seen (*h*), the question whether the County Courts do really possess an Admiralty jurisdiction distinct and different from that exercised by the Admiralty Division, is one on which there are conflicting decisions. It is quite discretionary with the Court to make the order of transfer or to withhold it (*i*).

An order of transfer must, so soon as it has been made, be served upon the other party and upon the registrar of the County Court in Admiralty.

Service of order.

So soon as the order of the High Court for the transfer of a cause from the County Court to itself under the provisions of section 6 of "The County Courts Admiralty Jurisdiction Act, 1868" (*k*) has been served upon him, the registrar forthwith transmits the proceedings in the County Court to the High Court under the following rule:—

Transmission of proceedings to High Court.

"Where an action is transferred to the High Court of Justice by order thereof, the registrar of the Court, upon the service of the order of transfer, shall send by post the proceedings to the proper officer of such Court."—Order XXXIII. r. 19.

Order XXXIII. rule 19.

After such transfer the action becomes for all purposes an action of the High Court of Justice (Admiralty Division), and subsequently proceeds in all respects as if it had been originally commenced in that division of the High Court.

Continuance of action in High Court.

The power of the High Court to transmit an action pending therein to a County Court has already been considered (*l*). And, as then mentioned, the practice is the same as in other cases of transfer under "The County Courts Act, 1867."

Power to transmit action from High Court to County Court.

## SECTION II.—TRANSFERS UNDER ORDERS OF COUNTY COURTS IN ADMIRALTY.

A County Court in Admiralty possesses powers of transfer of two distinct kinds. In the first place, it exercises a power similar to that vested in the High Court of ordering the transfer of an Admiralty action from such County Court in Admiralty itself into the High Court. And, secondly, every County Court in Admiralty also has the power (which the High Court does not possess) of ordering an action pending in such County

County Court in Admiralty may transfer an action (1.) to the High Court or (2.) to another County Court in Admiralty.

(*h*) *Post*, p. 752 *et seq.*

(*i*) See *The Swan*, L. R. 3 A. & E. 314; and see Roscoe's Admiralty Law and Practice, p. 70.

(*k*) *Supra*, p. 746.

(*l*) *Ante*, p. 701 *et seq.*

Court in Admiralty to be transferred into another County Court in Admiralty. These powers of transfer are contained in the following enactments of "The County Courts Admiralty Jurisdiction Act, 1868":—

31 & 32 Vict.  
c. 71, s. 7.

"If during the progress of an Admiralty cause in a County Court it appears to the Court that the subject matter exceeds the limit in respect of amount of the Admiralty jurisdiction of the Court, the validity of any order or decree theretofore made by the Court shall not be thereby affected, but (unless the parties agree, by a memorandum signed by them or by their attorneys or agents, that the Court shall retain jurisdiction,) the Court shall by order (m) transfer the cause to the High Court of Admiralty; but that Court may, nevertheless, if the Judge of that Court in any case thinks fit, order that the cause shall be prosecuted in the County Court in which it was commenced, and it shall be prosecuted accordingly."—31 & 32 Vict. c. 71, s. 7.

31 & 32 Vict.  
c. 71, s. 8.

"If during the progress of an Admiralty cause in a County Court it shall appear to the Court that the cause could be more conveniently prosecuted in some other County Court, or in the High Court of Admiralty of England, the Court may by order (n) transfer it to such other County Court or to the High Court of Admiralty of England, as the case may be, and the cause shall thenceforward be so prosecuted accordingly."—31 & 32 Vict. c. 71, s. 8.

Cinque ports  
are within  
above enact-  
ment.

Under the above section, an order for transfer can be made not only to the High Court, but, in certain cases, to the Court of Admiralty of the Cinque Ports. For "The County Courts Admiralty Jurisdiction Act, 1868," provides, by a subsequent section (o), that "In all cases which shall arise within the jurisdiction of the Cinque Ports as defined by the Act. First

A form of a memorandum under section 7 that the County Court in Admiralty shall retain jurisdiction may be adapted from one in the Appendix (*p*). Form of memorandum.

As regards the persons who may apply to the County Court for the purpose of having an Admiralty cause transferred to the High Court, "The County Court Rules, 1875," provide as follows :— Who may apply for a transfer.

"Any person claiming to have an interest in the vessel or property, whether cognisable by the Court or not, may intervene for the purpose of having the case transferred to the High Court of Justice (*q*)."—Order XXXIII. r. 10. Order XXXIII. rule 10.

The form of an order for transfer to the High Court under section 7 (on the ground of excess of jurisdiction) is provided (*r*). There is also another form prepared for use when the transfer is either to the High Court or to another County Court under section 8 (*s*). Form of order.

It is presumed that the above rule has no application to cases under 31 & 32 Vict. c. 71, s. 6, as that enactment *expressly* provides that the application for a transfer of a cause under its provisions shall be made to the High Court "by any party to an Admiralty cause pending in a County Court" (*t*). Application of above rule.

As regards the effect of an order of transfer it has been held that where the order of transfer is made by a County Court in Admiralty under section 8 of "The County Courts Admiralty Jurisdiction Act, 1878," and is for the transfer of the action to the High Court, the High Court can subsequently exercise in such action such jurisdiction only as was possessed by the County Court before the transfer (*u*). Effect of order of transfer.

Where the order directs a transfer, the registrar must transmit such order and the previous proceedings in the action to such other Court in the manner indicated by the following rule of "The County Court Rules, 1875" :—

"Where a Court orders the transfer of an action to the High Court of Justice or to another Court, the registrar shall send by post the order, together with the proceedings, to the registrar of the High Court of Justice or to the Court to which it is transferred."—Order XXXIII. r. 20. Order XXXIII. rule 20.

After a transfer under either of the above sections, the action proceeds as if commenced originally in the Court to which it is transferred. Proceedings after transfer.

(*p*) Appendix II. Form 78.

(*q*) This rule originally ran "to the High Court of Admiralty." But "The County Court Rules, 1876," provide :—

"In Ord. XXXIII. r. 10, for the word 'Admiralty' the word 'justice' is hereby substituted."—Order XXXIII. r. 10 *a*.

(*r*) Appendix II. Form 252.

(*s*) Appendix II. Form 253.

(*t*) *Ante*, p. 746.

(*u*) *The Ellis*, L. R. 4 A. & E. 1.

Order XXXIII. rule 10a.

## BOOK IV.

### JURISDICTION AND PROCEEDINGS IN ADMIRALTY AND PROBATE MATTERS.



#### CHAPTER III.

##### THE JURISDICTION OF COUNTY COURTS IN ADMIRALTY OVER ORDINARY ADMIRALTY ACTIONS.

*Jurisdiction  
of County  
Courts in  
Admiralty is  
(1.) Original  
or (2.) Ap-  
pellate.  
Present  
chapter only  
embraces  
original juris-  
diction as  
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nary action.*

THE jurisdiction possessed by County Courts in Admiralty is, in its nature, of two distinct kinds. It is either *original* or *appellate*.

The original jurisdiction comprised both the jurisdiction possessed by the County Courts to entertain Admiralty actions of the ordinary character, and also the jurisdiction which they enjoy under certain special statutes. In the present chapter it is proposed to consider the original jurisdiction, and, moreover, only so much of it as relates to ordinary actions. That portion of the original jurisdiction which is exercised under special statutes will be considered in separate chapters (a). And the appellate jurisdiction possessed by County Courts in Admiralty will form the subject of another distinct chapter (b).

*General juris-  
diction of*

The jurisdiction of County Courts in Admiralty is conferred, in general terms, by certain sections contained in "The County



“ to try and determine, subject and according to the provisions  
 “ of this Act, the following causes (in this Act referred to  
 “ as Admiralty causes) :—

- “ (1.) As to any claim for salvage—Any cause in which  
 “ the value of the property saved does not exceed  
 “ one thousand pounds, or in which the amount  
 “ claimed does not exceed three hundred pounds :
- “ (2.) As to any claim for towage, necessities, or wages—  
 “ Any cause in which the amount claimed does not  
 “ exceed one hundred and fifty pounds :
- “ (3.) As to any claim for damage to cargo, or damage by  
 “ collision—Any cause in which the amount claimed  
 “ does not exceed three hundred pounds :
- “ (4.) Any cause in respect of any such claim or claims as  
 “ aforesaid, but in which the value of the property  
 “ saved or the amount claimed is beyond the  
 “ amount limited as above mentioned, when the  
 “ parties agree by a memorandum signed by them  
 “ or by their attorneys or agents that any County  
 “ Court having Admiralty jurisdiction, and speci-  
 “ fied in the memorandum, shall have jurisdiction.”

—31 & 32 Vict. c. 71, s. 3.

The Admiralty jurisdiction of the County Courts under  
 “ The County Courts Admiralty Jurisdiction Act, 1868,” was  
 found to be not sufficiently extensive. Moreover, it could only  
 be exercised by proceedings *in personam*. Accordingly, “ The  
 County Courts Admiralty Jurisdiction Amendment Act, 1869,”  
 was passed, which “ shall be read and interpreted as one Act  
 with the County Courts Admiralty Jurisdiction Act, 1868 ” (c).  
 It enacts that :—

“ Any County Court appointed or to be appointed to have  
 “ Admiralty jurisdiction shall have jurisdiction, and all powers  
 “ and authorities relating thereto, to try and determine the  
 “ following causes :—

- “ (1.) As to any claim arising out of any agreement made  
 “ in relation to the use or hire of any ship, or in  
 “ relation to the carriage of goods in any ship, and  
 “ also as to any claim in tort in respect of goods  
 “ carried in any ship, provided the amount claimed  
 “ does not exceed three hundred pounds :
- “ (2.) As to any cause in respect of any such claim or  
 “ claims as aforesaid, but in which the amount  
 “ claimed is beyond the amount limited as above  
 “ mentioned, when the parties agree, by a memo-  
 “ randum signed by them or by their attorneys or  
 “ agents, that any County Court having Admiralty  
 “ jurisdiction, and specified in the memorandum,

Extension of  
 Admiralty  
 jurisdiction  
 of County  
 Courts by  
 “ The County  
 Courts Ad-  
 miralty Juris-  
 diction Act,  
 1869.”

32 & 33 Vict.  
 c. 51, s. 2.

“shall have jurisdiction.”—32 & 33 Vict. c. 51, s. 2.

32 & 33 Vict.  
c. 51, s. 4.

“The third section of ‘The County Courts Admiralty Jurisdiction Act, 1868,’ shall extend and apply to all claims for “damage to ships, whether by collision or otherwise, when the “amount claimed does not exceed three hundred pounds.”—32 & 33 Vict. c. 51, s. 4.

General construction of above enactments.

Act of 1868 only confers a concurrent jurisdiction with the Admiralty Court.

But it is a moot point whether Act of 1869 does not confer an extended jurisdiction.

There are one or two *general* observations to be made in reference to section 3, before dealing specifically with its subsections.

In the *first* place, as regards the *kind* of jurisdiction which is conferred upon certain County Courts, “The County Courts Admiralty Jurisdiction Act, 1868,” did not, it would seem, confer on the County Courts a *new* and *original* Admiralty jurisdiction, but merely a *portion* of that jurisdiction which was *formerly enjoyed exclusively by the High Court of Admiralty (d)*.

It is to be noticed that the language of “The County Courts Admiralty Jurisdiction Amendment Act, 1869,” is much more *general* than that adopted by the framers of the prior Act. And there can be no doubt that this enactment does confer additional jurisdiction on the County Courts. There is, however, a serious conflict of authority as to the *kind* of jurisdiction intended to be conferred. On the one hand, the Privy Council (*e*), in a considered judgment, has held that the Act confers on the County Courts jurisdiction in cases where the High Court of Admiralty did not possess it. While, on the other hand, the Court of Common Pleas, on two occasions (*f*), and also the Court of Exchequer (*g*), have held that the Act in question confers upon the County Courts merely a portion of the jurisdiction of the High Court of Admiralty. According to the *Privy Council*, the construction which they

Council would lead to serious anomalies, and is inconsistent with the evident scope and object of the Act. Moreover, according to the Court of Exchequer (*h*), it is incorrect to say that the Court of Admiralty had no jurisdiction over claims arising out of agreements for the use and hire of ships.

As it is impossible to determine which construction of the Act will probably be adopted, and as the decisions just referred to are of equal force, and are not all on the same section of "The County Courts Admiralty Jurisdiction Act, 1869," it is necessary to state briefly the exact point decided by each case.

In *Everard v. Kendal* (*i*), which was decided April 30th, 1870, it was held by the Court of Common Pleas, that the Admiralty jurisdiction of the County Courts in cases of *collision* is not more extensive than that of the High Court of Admiralty. And that, therefore, as the Court of Admiralty had no jurisdiction over a collision between two barges propelled by oars only, neither has the County Court any such jurisdiction. *Everard v. Kendal.*

In *The Swan* (*k*), which was decided December 9th, 1870, it was held, by Sir R. Phillimore, that the Court of Admiralty may transfer to itself from the County Court, and determine, causes which it has no original jurisdiction to try. This case presupposes that the County Court has jurisdiction over cases in which none was possessed by the Admiralty Court, and therefore is in accordance with the subsequent decision of the Privy Council. It is right to mention, however, that the attention of the Judge does not appear to have been called to the previous case of *Everard v. Kendal* (*ubi supra*). *The Swan.*

In *Simpson v. Blues* (*l*), which was decided May 7th, 1872, the Court of Common Pleas held, that "The County Courts Admiralty Jurisdiction Amendment Act, 1869," s. 2, does not give the County Courts Admiralty jurisdiction over a claim for breach of a charter-party, such claim being one over which the Court of Admiralty would have no jurisdiction, on the ground that the intention of the Act is not to give the County Court Admiralty jurisdiction in cases where the Court of Admiralty would not have had it, but only to give to a County Court a portion of the jurisdiction of the Court of Admiralty. *Simpson v. Blues.*

In *Cargo ex Argos* (*m*), which was decided in February, 1873, it was held by the Privy Council that "The County Courts Admiralty Jurisdiction Act, 1869," s. 2, gives the County Court jurisdiction in cases of claim arising out of charter-parties or other agreements for the use or hire of ships, although the Court of Admiralty may have no original juris- *Cargo ex Argos.*

(*h*) *Per* Bramwell, B., in *Gunnstead v. Price*, L. R. 10 Ex. 65, 75.

(*i*) L. R. 5 C. P. 428.

(*k*) L. R. 3 A. & E. 314.

(*l*) L. R. 7 C. P. 290.

(*m*) L. R. 5 P. C. 134.

32 & 33 Vict.  
c. 51, s. 4.

General construction of above enactments.

Act of 1869 only confers a concurrent jurisdiction with the Admiralty Court.

But it is a moot point whether Act of 1869 does not confer an extended jurisdiction.

"The Court of Admiralty."

"damages to be paid."

"any other claim."

32 & 33 Vict.

There are

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It was the decision of the Court of Admiralty in *Blue v. Blue* (1871) was expressly

which was decided February 1871.

The Court of Admiralty, that a claim for

The County Courts Admiralty Juris-

s. 2, which gives jurisdiction to County

and determine causes which are within the

Admiralty Court.

*Blue v. Blue* (1871), was expressly approved of,

expressly dissented from.

of the High Court (Admiralty Division) is

Admiralty jurisdiction of the High Court (Admiralty Division) is

impaired by the County Courts Admiralty Juris-

Such jurisdiction of the High Court where it

formerly existed still exists over the claims in respect of which

The County Courts also possess jurisdiction by virtue of "The

County Courts Admiralty Jurisdiction Act, 1868" (r). The

jurisdiction of the County Courts under the Act is, therefore,

merely and not exclusive. But, as will hereafter be

under the Merchant Shipping Acts, the Admiralty Court

has no concurrent jurisdiction with the County Courts in cases

of salvage (s).

In the next place, it is to be noticed that the jurisdiction

conferred by section 3 is limited in amount as well as in kind.

Sometimes it is seen that the amount claimed or the value of

the property saved must not exceed a certain pecuniary limit.

While again, in other instances, the amount claimed is neces-

sarily made the sole pecuniary test whereby to determine

whether the County Court possesses jurisdiction. It is im-

portant, therefore, to point out that the expression "claim"

occurring in "The County Courts Admiralty Jurisdiction Act



collision or otherwise, when amount claimed does not exceed £300 (*x*); (5.) any claim arising out of any agreement made in relation to the use or hire of any ship, or in relation to the carriage of goods in any ship, and also as to any claim in tort in respect of goods carried in any ship provided the amount claimed does not exceed £300 (*y*); (6.) any cause in respect of any of the above-mentioned claim or claims, in which the value of the property saved or the amount claimed is beyond the amount limited as aforesaid, and the parties agree in writing to give jurisdiction to the Court (*z*).

We will now proceed to consider each of these six classes or cases separately.

(1.) As to claims for *salvage*.

(1.) Claims for salvage.

It is to be noticed that the jurisdiction conferred by subsection 1 of section 3 of the Act of 1868 differs materially from that previously possessed by the County Courts in salvage cases under "The Merchant Shipping Acts" (*a*). In the first place, the present subsection gives jurisdiction to determine "*any claim for salvage*," whereas "The Merchant Shipping Acts" conferred jurisdiction only in cases of salvage *in respect of certain specified services*. And, in the *second* place, while, on the one hand, the subsection gives jurisdiction, as aforesaid, whenever the value of the property saved does not exceed £1,000, or the amount claimed does not exceed £300, on the other hand, "The Merchant Shipping Acts" limit the jurisdiction, in the specified instances of salvage, to cases where the sum claimed does not exceed £200, or where the value of the property saved does not exceed £1,000 (*b*).

It is also to be noticed that the pecuniary limit imposed by the subsection under consideration is in the *alternative*, that is to say, either the property saved must not exceed £1,000, or the amount claimed must not exceed £300 (*c*). Accordingly, it has been held, that a County Court has jurisdiction to entertain a suit for *distribution* of salvage where the amount which the Court is asked to apportion *does not exceed* £300, though the value of the property saved does exceed £1000, and though there has been no *original suit* for salvage, but the sum claimed has been ascertained to be due without the necessity of litigation (*d*).

(2.) As to claims for towage, necessaries, or wages.

(2.) Claims for towage, necessaries, or wages.

This jurisdiction is quite new, and can only be exercised by County Courts appointed to have Admiralty jurisdiction. The

(*x*) 32 & 33 Vict. c. 51, s. 4, *ante*, p. 752.

(*y*) 32 & 33 Vict. c. 51, s. 2, subsect. (1), *ante*, p. 751.

(*z*) 31 & 32 Vict. c. 71, s. 3, subsect. (4), *ante*, p. 751; and 32 & 33 Vict. c. 51, s. 2, subsect. (2), *ante*, p. 751.

(*a*) As to this see *post*, cap. vii., p. 796 *et seq.*

(*b*) See *post*, p. 797 *et seq.*

(*c*) See also *post*, sect. 9, at pp. 578-759.

(*d*) *The Glanvinta*, L. R. 2 P. D. 45; 25 W. R. 513.

*amount claimed must not exceed £100.* As regards the nature of the claims comprised by this subsection it has been held that the jurisdiction of the County Court to try and determine any claim for *remuneration* under it must be confined to any claim for *remuneration* - made by a Court having Admiralty jurisdiction - *etc.* And it has also been held that the words "any claim for . . . wages" in this subsection include a claim for damages for wrongful dismissal by the master of a vessel engaged under a special wages agreement. *f.* They do not, however, give jurisdiction to County Courts to entertain a claim for a master's *disbursements* *g.*

(2.) Claims for damage to cargo, or damage by collision.

(3.) As to any claim for damage to cargo, or damage by collision.

This subsection deals only with two very large classes of claims, namely, for damage to cargo or damage by collision. It does not include claims for damage to vessels *otherwise than by collision*. But it has been seen that the County Courts now possess jurisdiction in such cases also (*h.*). It has been held, however, that the Admiralty jurisdiction of the County Courts in cases of collision is not more extensive than that of the High Court of Admiralty, and that, therefore, it cannot entertain a case of collision between two barges propelled by oars only (*i.*).

In dealing with cases of damage by collision, it must not be forgotten that, as already stated (*k.*), "The Judicature Act, 1873" (36 & 37 Vict. c. 66) (*l.*), provides by section 25, subsection (9), that: "In any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be found to have been in fault, the rules hitherto in force in the Court of Admiralty, so far as they have been at variance with the rules in force in the Courts of Common Law, shall

has been in the habit of adding the value of both ships, and of then dividing the total between the two parties. This rule, it has been pointed out (*o*), works substantial justice, and does not really impose a greater burden upon one of two persons, who, being equally to blame for a collision, ought to suffer equally.

Section 4 of "The County Courts Admiralty Jurisdiction Amendment Act, 1869," provides that section 3 of the previous Act, shall extend and apply to all claims for damage to ships, *whether by collision or otherwise*, when the amount claimed does not exceed £300. This is an important extension of jurisdiction. For, previously, if a ship was damaged, *otherwise than by collision*, the County Court had no jurisdiction. And it is obvious that damage may be occasioned to a ship in many other ways besides collision.

(5.) As to any claim made out of any agreement made (1), in relation to the use or hire of any ship; (2), or in relation to the carriage of goods in any ship; and (3), as to any claim in tort in respect of goods carried in any ship.

The sub-section conferring this jurisdiction deals, it is to be observed, with *three* kinds of claim. Those which are marked for convenience (1) and (2) are founded on breach of *contract*, while the one marked (3) is *in tort*. No claim, however, whether it be in contract or tort, must exceed £300.

As we have already seen, when dealing with the question what *kind* of jurisdiction the County Courts possess under "The County Courts Admiralty Jurisdiction Amendment Act, 1869," there is some conflict of authority as to what claims are comprised by the present sub-section. Thus, while in one case (*p*) it was held, by the Court of Common Pleas, that the sub-section gives no jurisdiction to a County Court over claims for breach of a charter-party, on the other hand, in a more recent case (*q*), it was decided by the Privy Council that the County Court has jurisdiction in cases of claim arising out of charter-parties or other agreements for the use or hire of ships, although the Court of Admiralty may have no original jurisdiction in such cases.

(6.) Claims similar in kind to but exceeding in amount those mentioned in the Act.

Subsection of section 2 of "The County Courts Admiralty Jurisdiction Amendment Act, 1869," is substantially the same as subsection (4) of section 3 of "The County Courts Admiralty Jurisdiction Act, 1868" (*r*), and enables the parties themselves to give jurisdiction to the County Courts by agreement in

(4.) Damage to ship whether caused by collision or otherwise.

(5.) Claims made out of any agreement made in relation to the use or hire of any ship, the carriage of any goods, and in tort in respect of goods carried in any ship.

(6.) Claims similar in kind to, but exceeding in amount those enumerated.

(*o*) By Mr. Rothery (Wreck Commissioner), in a letter addressed by him to Lord Selborne, and set out in "MacLachlan's Treatise on the Law of Merchant Shipping" (2nd ed.) p. 287, note (2).

(*p*) *Simpson v. Blues*, L. R. 7 C. P. 290; *ante*, p. 753.

(*q*) *Cargo ex Argos*, L. R. 5 C. P. 134, *ante*, pp. 753-754.

(*r*) *Ante*, p. 751.

writing in cases where the limit of £300 is exceeded, but where the claims are of the kind mentioned in the preceding subsection. It is to be noticed that these subsections do not enable suitors to give the County Court jurisdiction in *every class* of Admiralty causes: but only in respect of the claim or claims *specified by the preceding subsections*, "in which the value of the "property saved or the amount claimed is beyond the amount "limited as above mentioned" (s.).

*Form of agreement to confer jurisdiction.*

As to the *form* of the agreement conferring jurisdiction upon the County Courts, it is to be noticed, that it must be in writing, and signed by the parties or by their attorneys or agents. Moreover, the memorandum must *specify* the County Court which is to have jurisdiction, and such Court must be a County Court appointed to have Admiralty jurisdiction. No form of consent specially applicable to Admiralty proceedings is provided, but one can easily be framed by adopting that provided for use in common law actions (t).

Causes and matters excluded from jurisdiction of County Courts by "The County Courts Admiralty Jurisdiction Act, 1868."  
31 & 32 Vict. c. 71, s. 4.

It has been seen how section 3 of "The County Courts Admiralty Jurisdiction Act, 1868," confers jurisdiction in certain Admiralty causes upon the County Courts. And it is now necessary to indicate certain matters which by the Act are expressly excluded from the jurisdiction of the County Courts. These are contained in the following section of the said Act:—

"Nothing in this Act, or in any Order in Council under it, shall confer on a County Court jurisdiction in any prize cause, or in any other matter within 'The Naval Prize Act, 1864,' or in any matter arising under any of the Acts for the suppression of the slave trade, or any Admiralty jurisdiction by way of appeal" (u)—31 & 32 Vict. c. 71, s. 4.

How recourse to County

Having now ascertained the nature and extent of the ori-

"or of such Superior Court or of a County Court having Admiralty jurisdiction, and shall not recover a sum exceeding the amount to which the jurisdiction of the County Court in that Admiralty cause is limited by this Act, and also if any person without agreement shall, except by order as aforesaid, take proceedings as to salvage in the High Court of Admiralty or in any Superior Court in respect of property saved, the value of which when saved does not exceed one thousand pounds, he shall not be entitled to costs, and shall be liable to be condemned in costs, unless the Judge of the High Court of Admiralty or of a Superior Court before whom the cause is tried or heard shall certify that it was a proper Admiralty cause to be tried in the High Court of Admiralty of England or in a Superior Court."—31 & 32 Vict. c. 71, s. 9.

It is to be noticed, in the *first* place, that the above section does not apply where proceedings have been taken in the High Court "*by order of the Judge of the High Court of Admiralty or of such Superior Court or of a County Court having Admiralty jurisdiction.*" In regard to this provision it has been held that the High Court (P. A. & D. Division) has power, under it, to grant an order for instituting proceedings before it, which might have been taken without agreement in the County Court (*x*). But it has no power to make this order *after* proceedings have already been instituted in the High Court (*y*).

Construction of  
above enact-  
ment.

So where there are circumstances rendering it advisable that an action which a County Court has jurisdiction to try should be commenced in the High Court, such as the necessity of a commission abroad, the Court will grant leave for a writ to issue in the High Court, though the cause of action may be of less amount than the limit of the County Court jurisdiction (*z*). Notice of the order made by the Court should be served with the writ (*a*).

In the next place it is to be observed that this section provides that, under certain conditions, a person shall not only *not* be entitled to costs, but shall be *condemned* therein, unless the Judge of the High Court, before whom the case is tried, *shall certify that it was a proper Admiralty cause to be tried in the High Court.* This power of certifying will be exercised by the Judge of the Admiralty Divisional Court when it is made clear to him that it was less expensive to try in London than in the County Court (*b*).

Let us now, in the *third* place, examine the conditions in

(*z*) *The Bengal*, L. R. 3 A. & E. 14. See also *The Beaumaris Castle*, 40 L. J. N. S. (Ad.) 41.

(*y*) *The Loreita*, 40 L. J. N. S. (Ad.) 41.

(*z*) *Ellis v. General Steam Navigation Co.*, 38 L. T. 570.

(*a*) *Ib.*


(*b*) *The Beaumaris Castle*, 40 L. J. N. S. (a) 41.

regard to costs imposed by the above section. Such conditions are two in number. The first relates to *all claims* (including salvage claims), and the second to *salvage claims only*.

The *first* condition is as follows :—A person is not entitled to costs, but liable to be condemned therein, under section 9, if “he shall not *recover* a sum exceeding the amount to which the jurisdiction of the County Court in the Admiralty cause is “limited by this Act.” One general test of liability to costs under this section is, then, the sum *recovered*, not the sum *claimed*. Therefore, where a plaintiff in an Admiralty suit, whose *bonâ fide* claim was less than £300, though the demand in his declaration was over that sum, sued in a Superior Court, and the defendant paid money into Court under £300, which the plaintiff took out in full satisfaction, it was held that the plaintiff was not entitled to his costs (c). For money so paid into Court and taken out is money “*recovered*” (d). But, where a cause of damage was instituted in the Superior Court, the damage done being over £300, but the owner's liability was subsequently limited below that amount, it was held that the plaintiff was entitled to costs in the Superior Court (e).

The *second* condition as to costs imposed by section 9, is briefly as follows, and, as already stated, applies only to *salvage cases* :—If any person take proceedings as to salvage in the High Court in respect of property saved, the value of which when saved does not exceed £1,000, he shall not be entitled to costs, but shall be condemned in costs, unless, &c., &c.

The effect of this provision as to salvage claims, is somewhat peculiar, as will now be explained. It has been seen (f) that the limit of the jurisdiction of the County Courts in salvage claims is in the *alternative*, i. e. either the property saved must not exceed £1,000, or the amount claimed must not exceed



## BOOK IV.

### JURISDICTION AND PROCEEDINGS IN ADMIRALTY AND PROBATE MATTERS.

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#### CHAPTER IV.

##### ARRESTS OF FOREIGN VESSELS.

It sometimes happens that a foreign vessel does injury to British property, but that circumstances prevent redress being at the time obtained for the damage done. Should a foreign vessel, which has thus committed an unredressed injury to British property, subsequently be found within British waters, it is, in the interests of home navigation, desirable that there should be a power to prevent such a vessel leaving again without having first made compensation for the injury inflicted by her. "The Merchant Shipping Act, 1854," accordingly confers a power of this description (a) upon the Judges of all Courts of Record.

Public policy requires that foreign ships which have damaged British property should be detained if found in British waters.

The provisions of "The Merchant Shipping Act, 1854," on this subject, are in the following terms:—

"Whenever any injury has, in any part of the world, been caused to any property belonging to Her Majesty, or to any of Her Majesty's subjects, by any foreign ship, if, at any time thereafter, such ship is found in any port or river of the United Kingdom, or within three miles of the coast thereof, it shall be lawful for the Judge of any Court of Record in the United Kingdom, or for the Judge of the High Court of Admiralty, or in Scotland the Court of Session, or the sheriff of the county within whose jurisdiction such ship may be, upon its being shown to him by any person applying summarily that such injury was probably caused by misconduct or want of skill of the master or mariners of such ship, to issue an order directed to any officer of customs or other officer named by such Judge, requiring him to detain such ship until such time as the owner, master, or consignee thereof has made satisfaction in respect of such injury, or

Power of Judge of Court of Record or Admiralty to arrest foreign ship that has occasioned damage.

*The Merchant Shipping Act, 1854, s. 527.*

(a) This power of arrest of foreign vessels before action conferred by the Merchant Shipping Act, must not be confounded with the general jurisdiction of County Courts in Admiralty after action brought to arrest and detain a vessel *pendente lite*.

“has given security to be approved by the Judge, to abide the event of any action, suit, or other legal proceeding that may be instituted in respect of such injury, and to pay all costs and damages that may be awarded thereon; and any officer of customs or other officer to whom such order is directed, shall detain such ship accordingly.”—17 & 18 Vict. c. 104, s. 527.

Jurisdiction to arrest foreign ships under above enactment may be exercised by Judge of any County Court.

Jurisdiction to arrest a foreign ship under above enactment may be exercised by Judge of any County Court.

As a rule it will be found that *foreign vessels*, whose arrest is desired, are, as a matter of *fact*, within the territorial limits of a County Court specially vested with Admiralty jurisdiction by Order in Council. But it is quite *possible* that, in some few cases, this may not be so. Whenever *practicable*, it, of course, will be prudent to avoid all questions, by making application for arrest to the Judge of a County Court having jurisdiction in Admiralty.

But it is submitted that it is quite clear that the Judge of *any* County Court has power to arrest a foreign ship, under the enactment now about to be set out. For “The County Courts Admiralty Jurisdiction Act, 1868” (*b*), deprives the County Courts, not appointed to have Admiralty jurisdiction, only of jurisdiction “*in any Admiralty cause.*” And the power of arresting a foreign ship is one which the Judge is not required to exercise “*in an Admiralty cause,*” but on summary application made to him for that purpose. Moreover, the power of arrest is not given to the Court, but to *the Judge* personally (*c*). Practically, however, it will be seen that such application will usually have to be made to a County Court *appointed* to have Admiralty jurisdiction.

We will now proceed to give the enactments on this subject.

Who may apply for

As regards the persons who may apply for the arrest of a foreign vessel under section 527 of “The Merchant Shipping



be made where the ship is within the territorial limits of the County Court.

Where it seems likely that a vessel, sought to be arrested, will take its departure *before* application can be made to the County Court, such a case is met by the following provision of "The Merchant Shipping Act, 1854":—

"In any case where it appears that before any application can be made under the foregoing section, such foreign ship will have departed beyond the limits therein mentioned, it shall be lawful for any commissioned officer on full pay in the military or naval service of Her Majesty, or any British officer of Customs, or any British consular officer, to detain such ship until such time as will allow such application to be made, and the result thereof to be communicated to him; and no such officer shall be liable for any costs or damages in respect of such detention, unless the same, is proved to have been made without reasonable grounds."—17 & 18 Vict. c. 104, s. 528.

In the event of any action or suit in relation to injury caused by a foreign ship, which has been the subject of an application under section 527, it is provided by "The Merchant Shipping Act, 1854," that:—

"In any action, suit, or other proceeding in relation to such injury, the person so giving security as aforesaid (*d*), shall be made defendant or defender, and shall be stated to be the owner of the ship that has occasioned such damage; and the production of the order of the Judge made in relation to such security shall be conclusive evidence of the liability of such defendant or defender to such action, suit, or other proceeding."—17 & 18 Vict. c. 104, s. 529.

(*d*) See sect. 527, *ante*, pp. 761-762.

Where no time for arrest under preceding section, arrest may be made by a naval or military officer or a Custom House officer or a Consular officer.

*The Merchant Shipping Act, 1854, s. 528.*

Proceedings when foreign ship has caused an injury to property and has been made the subject of an application under sect. 527 of "The Merchant Shipping Act, 1854." Who to be defendant to suit in such cases.

*The Merchant Shipping Act, 1854, s. 529.*

## BOOK IV.

### JURISDICTION AND PROCEEDINGS IN ADMIRALTY AND PROBATE MATTERS.

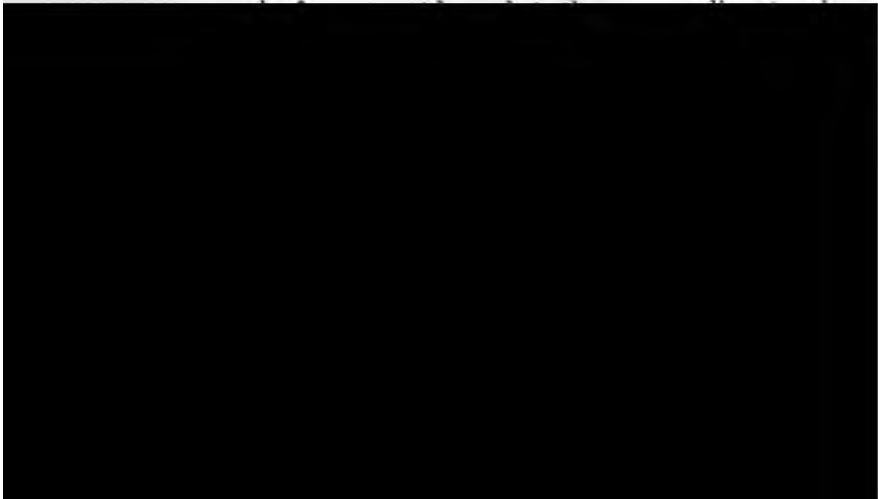


#### CHAPTER V.

##### THE PROCEEDINGS IN AN ORDINARY ADMIRALTY ACTION.

Various steps  
in an ordinary  
Admiralty  
action in  
the County  
Court.

FOLLOWING the plan adopted in the Order (*a*) relating to Admiralty contained in "The County Court Rules, 1875," it is proposed, in the present chapter, to discuss step by step, and each in a separate section, the various proceedings in a County Court action in Admiralty. It will, however, not be convenient to follow in its details the arrangement of the subject adopted in the County Court Order in question. For it will be needful to consider, not only the provisions of the County Court Order itself, but also the various enactments and the different judicial decisions which relate to the respective steps in an Admiralty action in the County Court. And, moreover, some of the subjects dealt with by the Order in question—such, for example, as the jurisdiction and the sittings of County Courts in Admiralty—have already been considered. The arrangement adopted in Book II. of the present work will, therefore, again be followed. And in the various stages of an Admiralty action



“exercised either by proceedings *in rem* or by proceedings *in personam*.”—32 & 33 Vict. c. 51, s. 3.

In Admiralty proceedings *in personam* the claimant for salvage, towage, necessities, wages, or for damage to cargo or damage by collision, or for any other matter, will be the plaintiff, and the person against whom the claim is made will be the defendant, who is usually the owner of the ship.

Parties to proceedings *in personam*.

It has recently been held that a pilot cannot be made responsible in an Admiralty suit for damage occasioned to another vessel by a collision occurring through his negligence (c).

In cases where the proper individual to make a defendant is *not known*, the action may nevertheless be brought against an *unknown defendant*, though the vessel or property to which the action relates will not, in such a case, be taken in execution, but it may be arrested and detained under sect. 22 of “The County Courts Admiralty Jurisdiction Act, 1868” (d), or kept under arrest if already arrested (e).

Proceedings against unknown defendants.

In cases where proceedings are taken *in rem*, by virtue of sect. 3 of “The County Courts Admiralty Jurisdiction Amendment Act, 1869” (f), the *præcipe* states that the action is instituted *against the vessel or property to which the action relates*. But proceedings *in rem* cannot be taken under sect. 2, subsect. 1 (g) of “The County Courts Admiralty Jurisdiction Amendment Act, 1869,” by one who is not a party to the charter. This was decided in the case of *The Nuova Raffaelina* (h). Here a charter-party of the ship N. entered into between the master of the ship and a firm of Liverpool merchants, contained a clause stating that £2 10s. per cent. commission was due on the execution of the charter-party to J. and K. J. and K., who were the brokers who had effected the charter-party, instituted a suit against the ship to recover this commission in the Court of Passage (Admiralty Jurisdiction). The Court dismissed the suit on the ground that it had no jurisdiction to entertain the claim. On appeal the Court of Admiralty held, that the claim did not arise out of any agreement made in relation to the use or hire of a ship, within the meaning of the second section of “The County Courts Admiralty Jurisdiction Amendment Act, 1869,” and affirmed the decision of the Court below.

Parties to proceedings *in rem*.

(c) *The Alexandria*, L. R. 3 A. & E. 574; *The Urania*, 10 W. R. 97.

(d) See this section, *post*, p. 772.

(e) See Ord. xxxiii. r. 23, *post*, p. 783.

(f) *Supra*.

(g) See this section, *ante*, p. 751.

(h) L. R. 3 A. & E. 483.

SECTION II.—NOTICE TO CONSUL IN ACTION AGAINST  
FOREIGN SHIP FOR WAGES.

Notice re-  
quired to  
Consul in an  
action for  
wages brought  
against a  
foreign  
vessel.

Just as, in ordinary actions, a notice before action is in certain cases required, so it would appear that *before* an action for wages can be brought against the owners of a foreign vessel, notice of its commencement must be given to the Consul (if there be one) of the country to which such vessel belongs. The County Court rule on the subject is, however, by no means explicit, and does not show whether the notice rendered necessary by it is to be given before the action is brought, or is to be a notice of the institution of the action after it has actually been commenced. As, however, "a copy" of the notice is required to be annexed to the *præcipe* for the summons commencing the action, it would appear that a preliminary notice before the commencement of the action is what is contemplated. The following is the rule in question :—

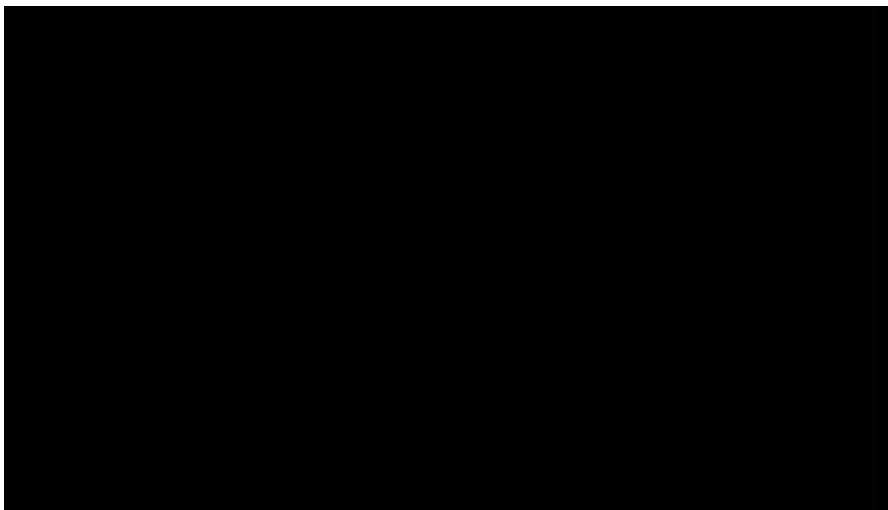
Order  
XXXIII.  
rule 5.

"In an Admiralty action for wages against the owners of a foreign vessel, notice of the commencement of the action shall be given to the Consul or Vice-Consul of the state to which the vessel belongs, if there be one resident within the district of the Court, and a copy of the notice shall be annexed to the *præcipe*."—Order XXXIII. r. 5.

Form of  
notice.

No form of notice under the above rule is provided in the appendix of forms. But it is suggested that one can readily be framed from the form of summons in an Admiralty action, which will be found duly framed (i).

SECTION III.—IN WHAT DISTRICT AN ADMIRALTY ACTION  
MUST BE COMMENCED.



- “agent does not reside within any such district,  
 “then in the County Court having Admiralty  
 “jurisdiction the district whereof is nearest to  
 “the place where such owner or agent resides :  
 “(3.) If for any reason the last foregoing rule is not  
 “applicable or cannot be acted on, then in such  
 “County Court having Admiralty jurisdiction as  
 “general orders direct :  
 “(4.) In any case in the County Court or one of the  
 “County Courts having Admiralty jurisdiction  
 “in which the parties by a memorandum, signed  
 “by them or by their attorneys or agents, agree  
 “shall have jurisdiction in the cause.”—§1 & 32  
 Vict c. 71, s. 21.

#### SECTION IV.—ENTRY OF PLAINT AND ISSUE AND SERVICE OF SUMMONS.

Admiralty actions are, like other County Court actions (*k*), commenced by the entry of a plaint, on which a summons is issued calling upon the defendant to answer the action. Full instructions as to the details of the practice to be followed on entering a plaint will be found in a previous chapter, to which reference should be made for information (*k*). Forms of particulars to be filed with the plaint are provided (*kk*).

Admiralty actions are commenced by plaint and summons.

Particulars.

In addition to the usual steps on entering a plaint, it is further required that, when a solicitor enters a plaint, he file a “*præcipe*” signifying his desire to commence the action. This is required by “The County Court Rules, 1875,” which provide as follows :—

Solicitor entering a plaint must file a *præcipe*.

“A solicitor desiring to commence an Admiralty action shall file a *præcipe* (*l*) which shall state the nature of the action, the name, address, and description of the party in whose behalf it is instituted, the name of the solicitor, and an address within three miles of the Court-house at which it shall be sufficient to leave all instruments and documents in the action required to be served upon him, and it shall also state the name of the owner or owners or other person against whom the action is instituted, or it shall state that the action is instituted against the vessel or other property to which the action relates.”—Order XXXIII. r. 4.

Order XXXIII. rule 4.

A form of *præcipe* on entry of plaint is provided (*l*).

The usual poundage fees are payable on the entry of a plaint in an Admiralty action (*m*).

Fee on plaint.

The action will, in the absence of any steps to secure a

If special

(*k*) As to the mode of entering a plaint generally, see *ante*, Book II. cap. vi. p. 279 *et seq.*

(*kk*) See Appendix II. Form 46, examples Y, Z, AA, BB, CC, and DD.

(*l*) Appendix II. Form 243.

(*m*) See *ante*, p. 285.

sitting of Court required, a *præcipe* for it must also be delivered.

Form of *præcipe* for special sitting.

If assessors required, fee for them must be paid on entry of plaint.

Issue of summons.

Order XXXIII. rule 6.

Forms of summons.

By whom the summons is served.

Mode of service.

Order

special hearing, be heard in ordinary course at one of the usual sittings of the Court. There is, however, as we have seen in the chapter on the jurisdiction (*n*), power to hold a special sitting at any place within the Admiralty district of the Court (*o*). Where it is desired to obtain a special sitting of the Court, an additional *præcipe* must be filed requesting such special sitting (*p*).

The Form of a *præcipe* for a special sitting will be found in the Appendix (*q*).

Again, as we also have seen in a previous chapter (*r*), if the plaintiff in the action desires the trial to take place before assessors, he must, at the time of delivering the *præcipe*, pay to the Registrar the fees for such assessors (*s*). Such fees are two guineas, if the amount claimed do not exceed £100, or four guineas, where the claim exceeds £100 (*s*).

The *præcipe* being duly filed, the Registrar at once enters a plaint, and issues a summons. For it is directed :—

“Immediately upon the filing of the *præcipe* the Registrar “shall (*t*) enter plaint, and shall issue a summons for service “by the solicitor, or if so required, by the bailiff of the Court.” —Order XXXIII. r. 6.

Forms of summons are provided (*u*).

The summons may be served either by the solicitor (if there be one) who enters the claim, or by the bailiff of the Court. It will be seen, on reference to the form, that the *præcipe* for the commencement of an action, may require that the bailiff may serve the summons. Unless this request be made, the solicitor entering the action must himself serve the summons.

With regard to the mode of the service of a summons in an Admiralty action, the rules contain the following directions :—

“Where the vessel or property to which the action relates is

"affidavit allow of substituted service" (x).—Order XXXIII. r. 7.

It may be observed that *after* the institution of an Admiralty cause in the County Court, if it is probable that the vessel or property to which the cause relates, will be removed out of the jurisdiction of the Court, proceedings may be taken for the arrest of such vessel or property, *even before the defendant's appearance* (y). The consideration of these proceedings is, however, remitted to a subsequent section (z), as they do not *necessarily* belong to the stage of the action now reached, nor, indeed, to any particular stage of the action.

Detention  
of vessels  
proceeded  
against.

### SECTION V.—APPEARANCE OF THE DEFENDANT.

The summons served upon the defendant in an Admiralty action, requires him, as will be seen on reference to the forms (zz), to enter an appearance in the action within four days. The consequences of the omission of a defendant to appear are, that, although he may appear at the trial, the action up to trial, and (unless he then appear) also at the trial itself, proceeds in his absence; that he receives no notice of the day of trial (a), and that he cannot take any interlocutory proceedings in the action. These inconveniences are so great that it is usually advisable for the defendant in an Admiralty action to enter an appearance in the action.

Appearance  
not compul-  
sory, but  
usually con-  
venient.

An appearance may be entered by a defendant, either upon being served with a summons, or upon his vessel being arrested. The arrest of a vessel is equivalent to the service of a summons.

Appearance  
may be entered  
on arrest of a  
vessel.

"Upon the arrest of any vessel or property, an appearance may be entered, the same as upon the service of the summons."—Order XXXIII. r. 11.

Order  
XXXIII.  
rule 11.

The mode of entering an appearance in an Admiralty action is, by attending at the Registrar's office, and there filing a præcipe in accordance with the following rules:—

Appearance  
entered by  
filing a  
præcipe.

"A solicitor desiring to enter an appearance in an action shall file a præcipe (b), and thereupon an entry of his appearance shall be made in the Admiralty Suits Book."—Order XXXIII. r. 8.

Order  
XXXIII.  
rule 8.

"The præcipe shall state the name, address, and description of the party on whose behalf the appearance is entered, the name of the solicitor, and an address within three miles of the Court-house, at which it shall be sufficient to leave all instruments and documents in the action required to be served upon him."—Order XXXIII. r. 9.

Order  
XXXIII.  
rule 9.

(x) Appendix II. Forms 275 & 276.

(y) 31 & 32 Vict. c. 71, s. 22, *post*, p. 772.

(z) *Post*, p. 772.

(zz) Appendix II. Forms 245, 246.

(a) Under Ord. XXXIII. r. 12, *post*, p. 777.

(b) Appendix II. Form 250.

The form of a præcipe to enter an appearance will be found in the Appendix of Forms (*b*). An appearance having been entered, the Registrar will, on the application of either party, issue notice of trial in accordance with a rule which is subsequently set out (*c*).

#### SECTION VI.—NOTICES OF SPECIAL DEFENCES.

Notice of  
defence not  
usually  
needed.

But necessary  
in certain  
cases.

The defendant in an Admiralty action, as stated in the last section, is not obliged to appear at all ; and, as a rule, he need not give any notice of defence.

In certain cases, however, a notice of defence is required. Should it occur that a defendant in an Admiralty action sought to set up any one of the special defences mentioned in the chapter on that subject, he certainly would have to give notice of such special defence in the manner described in that chapter (*d*). And the order relating to Admiralty provides, as regards Admiralty actions, for notice of defence in two cases.

First, the defendant should give notice of defence in actions for damage by collision, where he intends to set up as a defence that the vessel was by compulsion of law in the charge of a pilot. On this subject "The County Court Rules, 1875," provide as follows :—

Notice should  
be given of  
defence that  
vessel was  
under com-  
pulsory charge  
of a pilot.

Order  
XXXIII.  
rule 32.

"Where in actions for damage by collision the defendant  
"intends to set up as a defence that the vessel was by com-  
"pulsion of law in the charge of a pilot, he should give notice  
"thereof to the adverse solicitor as soon after the service of  
"summons as may be, and if he shall fail to give such notice  
"the Judge shall, in exercising his discretion as to costs, con-  
"sider what effect the non-delivery of the notice has had in  
"the action." Order XXXIII. rule 32.



"Within forty-eight hours from the payment the adverse solicitor shall file a notice stating whether he accepts or rejects the tender, and, if he shall not do so, he shall be deemed to have rejected it."—Order XXXIII. r. 34.

No form of acceptance or rejection of money paid into Court is provided, but one may easily be framed as suggested on a previous page (*f*).

Order  
XXXIII.  
rule 34.

Form of  
acceptance.

## SECTION VII.—INTERLOCUTORY PROCEEDINGS.

In an Admiralty action, just as in an ordinary action, there are various interlocutory proceedings which may be taken by either party to the action. As these present some peculiarities, it is necessary to consider them somewhat in detail.

Speaking generally, as regards the tribunal by which interlocutory applications may be disposed of, it will be seen that powers for this purpose are vested not only in the *Judge*, but also in the *Registrar* (*g*).

Interlocutory proceedings in Admiralty cases are, again, for the most part, conducted by means of proceedings in Chambers, founded on evidence contained in affidavits. The mode of preparing affidavits is detailed in a former part of this work (*h*).

Interlocutory proceedings in an Admiralty action may, it would appear (inasmuch as the County Court Acts with reference to Admiralty are to be read together with the other County Court Acts), be the same as in other cases, save so far as the rules relating to particular proceedings in an Admiralty action are in any instance inconsistent. The practice will in any such cases be the same as in ordinary actions. General reference must therefore be made to the earlier chapters of this work dealing with the subject (*i*).

There are, however, certain interlocutory proceedings which are either peculiar to Admiralty actions or with reference to which the rules contain special provisions applicable to the event of such proceedings, although of a common nature, being taken in Admiralty actions. The interlocutory proceedings which, for these reasons, it becomes necessary to specially consider are five in number, namely: (1.) Proceedings as to the arrest and detention of vessels *pendente lite*; (2.) Payment of money into or out of Court; (3.) Inspection of records *pendente lite*; (4.) Examinations of witnesses before trial; (5.)

Interlocutory  
proceedings  
in Admiralty  
actions are  
of various  
kinds.

By whom  
interlocutory  
matters are  
heard.

How inter-  
locutory pro-  
ceedings are  
heard.

Interlocutory  
proceedings  
generally.

Interlocutory  
proceedings  
peculiar to  
Admiralty  
actions.

(*f*) See *ante*, pp. 341—2.

(*g*) See 31 & 32 Vict. c. 71, s. 20, *ante*, p. 741; 31 & 32 Vict. c. 71, s. 22, *post*, p. 772.

(*h*) See *ante*, p. 349 *et seq.*

(*i*) See *ante*, Book II. cap. ix. as to interlocutory proceedings in general, at p. 344 *et seq.*; cap. x. as to interlocutory proceedings to protect property or rights, at p. 368 *et seq.*; and cap. xi. as to interlocutory proceedings in aid of the action, at p. 376 *et seq.*

Orders that cross-actions be tried together; (6.) Orders for the transfer of an action to another Court.

(1.) Proceedings as to arrest or detention *pendente lite*.

Application may, so soon as an action is formally instituted, be made for the arrest and detention of a vessel or other property *pendente lite*. Such an application as this differs altogether from an application to arrest a foreign vessel before action made under sections 527 and 528 of "The Merchant Shipping Act, 1854" (*k*).

Jurisdiction to entertain application.

The jurisdiction to entertain an application for the arrest or detention of a vessel or property *pendente lite* is conferred by the following section of "The County Courts Admiralty Jurisdiction Act, 1868":—

31 & 32 Vict.  
c. 71, s. 22.

"In an Admiralty cause in a County Court, if evidence be given to the satisfaction of the Judge, or in his absence the Registrar of the Court, that it is probable that the vessel or property to which the cause relates will be removed out of the jurisdiction of the Court before the plaintiff's claim is satisfied, it shall be lawful for the said Judge, or in his absence for the Registrar to issue a warrant for the arrest and detention (*l*) of the said vessel or property, unless or until bail (*m*) to the amount of the claim made in such cause, and to the reasonable costs of the plaintiff in such cause, be entered into and perfected, according to General Orders, by or on behalf of the owner of the vessel or property or his agent, or other the defendant in such cause; and, except as in this section expressly provided, there shall be no arrest or detention of a vessel or property in an Admiralty cause in a County Court otherwise than in execution."—31 & 32 Vict. c. 71, s. 22.

The person to make the application is the plaintiff.

By whom application can

An application of this kind, it will be noted, can only be made *pendente lite*, i.e., after action commenced.

"is desired to arrest any vessel or property, the solicitor must file an affidavit stating the facts which render it probable that it will be removed out of the jurisdiction of the Court." *Order XXXIII. rule 13.*

—Order XXXIII. r. 13.

"In an Admiralty action for necessities or for wages, the national character of the vessel shall be stated in the affidavit." *Order XXXIII. rule 14.*

—Order XXXIII. r. 14.  
For full instructions as to the form of the necessary affidavits and the mode of preparing, filing, and swearing them, reference must be made to an earlier portion of this work (*nn*).

"Where upon the filing of such affidavit the Registrar, in the absence of the Judge, is satisfied with the evidence, he may issue a warrant for the arrest and detention of the vessel or property, and where he is not satisfied he may require further evidence to be adduced."—Order XXXIII. r. 15.

The form of a warrant for the arrest and detention of a vessel *pendente lite*, made under the enactment just set out, is furnished in the Appendix (*o*).

As regards the time when the warrant of arrest may be executed, "The County Court Rules, 1875," provide as follows:—

"A warrant of arrest may be executed on Sunday, Good Friday, or Christmas Day, as well as on any other day."—Order XXXIII. r. 16.

So soon as property has been arrested an appraisement of it may be obtained by either party:—

"The Registrar may, on the application of either solicitor, and whether *before* or after judgment, order any property under arrest to be appraised."—Order XXXIII. r. 37.

When property has been arrested in the manner above pointed out the defendant may think it desirable to obtain its immediate release rather than to leave it subject to the warrant of arrest to abide the result of the action. And accordingly "The County Court Rules, 1875," provide machinery whereby the defendant may carry out his wishes in this respect. The rules governing the subject are as follows:—

"Where in an Admiralty action the amount sued for is paid into Court, together with costs, or the security completed, or where the plaintiff's solicitor usually requires it, the Registrar shall deliver to the solicitor an order directed to the high bailiff of the Court, authorizing and directing him, upon payment of all costs, charges, and expenses attending the custody of the property, to release it forthwith."—Order XXXIII. r. 17 (*p*).

"Notwithstanding the last preceding rule, the property, in an Admiralty action for salvage, shall not be released until" *Order XXXIII. rule 18.*

(nn) See *ante*, p. 349 *et seq.*

(o) Appendix II. Form 247.

(p) Appendix II. Form 249 is Form of Order for Release.

"its value has been ascertained either by affidavit, by agreement, or by appraisement, save by consent of the plaintiff or his solicitor."—Order XXXIII. r. 18.

*How release obtained.*

It will be noted that the first of the two rules above set out provides that the release of the vessel may be obtained in two ways—viz, either by payment into Court of the amount sued for; or by giving security by bond to pay whatever the Court may order.

*Security by payment into Court.*

Should the defendant give the security by a payment of money into Court, the payment into Court is made in the manner pointed out on a previous page (9). A memorandum of the deposit of the money is given to the defendant in the form provided (r).

*Security by bond.*

Should the defendant give security by bond, reference must be made to a former page for the practice as to the preparation and execution of such bond. The form of the necessary bond will be found in the Appendix (s).

*Appraisement before release.*

Security having been duly given, it is, unless the plaintiff consent to dispense with it, still necessary that before the warrant of release can issue, the vessel be appraised. An appraisement can, as just mentioned, be obtained by either party on application.

*Issue and form of warrant of release.*

So soon as security has been given and an appraisement made, the Registrar issues his warrant for the release of the vessel. The form of a warrant of release is in the Appendix (t).

*(2.) Payment of money into and out of Court.*

Secondly, in the cause of an Admiralty action, it frequently happens that a payment into Court may be made, on the one hand, and that it is, on the other hand, desirous to obtain payment out of Court of monies thus paid in.

*Payment into Court.*

As regards payment of money into Court, there are no special rules relating to Admiralty cases, and the practice which will be

as to the mode of obtaining a payment out of Court will be found in an earlier Chapter (x).

(3.) Thirdly, an inspection of the records in a pending action can be effected in accordance with "The County Court Rules, 1875," which provide as follows:—

(3.) Inspection of records, *pendente lite*.

"The solicitors in an action, their clerks, and the parties themselves, may, while the action is pending, and for one year after its termination, inspect free of charge, all the records in the action."—Order XXXIII. r. 38.

Order XXXIII. rule 38.

"In a pending action no person other than the solicitor or his clerk, or the party in the action, shall be entitled to inspect the records in the action without the permission of the Registrar."—Order XXXIII. r. 39.

Order XXXIII. rule 39.

The right of inspection of records where the action is *terminated* is dealt with by a separate rule which is set out on an earlier page (y). The above rules, it is to be noticed, deal only with the right of inspection *pendente lite*, and within one year after an action has terminated. And this right can, it will be observed, be exercised *by the parties or their solicitors or their solicitors' clerks* (i.) free of charge, and (ii.) without the permission of the Registrar.

(4.) We now come to the examination of witnesses *before trial*. Though there is no express provision applicable to Admiralty causes in particular, with reference to the examination of witnesses before trial, yet it is apprehended that such an examination will be permitted under such circumstances as have already been mentioned as furnishing good ground for this mode of taking evidence in an ordinary action, and also where parties agree that the evidence at the hearing shall be by way of written depositions (z). At all events, it is submitted that some such method of procedure is contemplated by "The County Courts Admiralty Jurisdiction Act, 1868," which, as already stated (a), provides that the registrar shall for the purposes of the examination of any witnesses within the district of the Court, have all and the like powers and authorities of an examiner of the High Court of Admiralty in England (b).

(4.) Examination of witnesses before trial.

(5.) An order for the trial of cross actions at the same time and upon same evidence, is sometimes applied for. On this subject "The County Court Rules, 1875," provide as follows:—

"Where a second or cross action for damage has been instituted by a defendant in an action for damage, and the second action has been instituted, by agreement or otherwise, in the Court in which the first action was instituted, or has

(5.) Application for trial of cross-actions at the same time and upon the same evidence.

(x) See *ante*, p. 342.

(y) Ord. XXXIII. rule 40, *ante*, p. 740.

(z) *Ante*, Book II. cap. xi. sect. 7, p. 404—408.

(a) *Ante*, p. 741.

(b) As to the nature of an examiner's powers and authorities see Coot's Admiralty Practice (2nd ed.), p. 63 *et seq.*

Order  
XXXIII.  
rule 22.

“ been transferred to the said Court by order of any other  
“ Court, the Court may direct that both actions may be tried  
“ at the same time and upon the same evidence.”—Order  
XXXIII. r. 22.

It is apprehended that the direction as to trial referred to in  
this rule, is one which may be given either spontaneously by  
the Court, or on application made to it for that purpose.

(6.) Transfers  
of actions.

(6.) With regard to the transfer of actions it is not necessary  
to do more in this place than to refer to an earlier chapter of  
this work, at which the practice as to transfers is fully  
detailed (c).

### SECTION VIII.—PREPARATIONS FOR THE TRIAL.

General mode  
of preparation  
for trial.

Obtaining a  
trial with a  
jury.

The matters to be considered in the preparation for trial have  
already been referred to at length in Book II. Chapter XII., to  
which a general reference must be made on the subject (d). It is  
expressly provided that, with certain exceptions, an Admiralty  
cause in a County Court shall be heard and determined in like  
manner as ordinary civil causes are now heard and determined  
in County Courts (e). Now, as has been pointed out in a pre-  
vious part of this work (f), the tribunal to hear a case is, as a  
rule, the Judge alone (g). And if a trial by jury be desired,  
notice of a jury must be given (h). Whether a jury can be  
summoned in Admiralty causes is not expressly stated. But it  
is submitted that the language of section 10 of “The County  
Courts Admiralty Jurisdiction Act, 1868” (i), is sufficiently  
wide to render this mode of trial available. The mode of pro-  
curing the attendance of a jury has already been explained (k).

Obtaining a

As already has been pointed out (l), if a trial with assessors

County Court Admiralty Jurisdiction Act, 1868," provides, it will be recollected (*o*), that a sitting of the Court shall be holden as soon as may be after the Judge has had notice that an Admiralty cause has arisen in the district.

Time of trial.

It also will be borne in mind that, if so desired, a sitting of the Court may, by delivery of a præcipe requiring it, be obtained at a place specially fixed for the purpose (*p*).

Place of trial.

The time and place of trial being fixed, the rules provide for notice of the appointment being given to the parties.

Notice of place and time of trial.

"Where an appearance has been entered the Registrar shall upon application by either plaintiff's or defendant's solicitor give to each solicitor in the action, and where no appearance has been entered then to the plaintiff or his solicitor, a notice under the seal of the Court, stating the day upon which the action has been directed by the Judge to be heard."—Order XXXIII. r. 12.

Order XXXIII. rule 12.

The Appendix of Forms contains a notice appointing a day for trial (*q*).

Form of notice.

In anticipation of the trial the same steps are taken as detailed in a former chapter (*s*). In the mode mentioned there process is issued to secure the attendance of witnesses (*t*). Notice to use affidavit evidence may be given (*t*), and notices to admit and to produce should be prepared and served (*tt*).

## SECTION IX.—THE TRIAL AND JUDGMENT.

Before the trial of an Admiralty action can take place, the usual hearing fee of 2*s.* in the £ must be paid (*u*). If a special sitting is held for the trial of the action, the following fees are payable, viz., 25*s.* if the claim be under £100, or 35*s.* if it be above £100, and also, if the Court sits beyond three miles from the Registrar's office, 15*s.*, with 6*d.* a mile as mileage to the Registrar, and a further fee of £1 1*s.* if the Registrar cannot return home the same night (*x*).

Payment of hearing fee.

On the day appointed for trial, the parties to the cause appear, either in person or by solicitor, in the same way as in an ordinary action (*y*). A day for the hearing is, as we have just seen (*z*), fixed by the Judge, and notice thereof given by

Appearance of the parties.

(*o*) See 31 & 32 Vict. c. 71, s. 13, *ante*, p. 739.

(*p*) See Ord. XXXIII. r. 2, *ante*, p. 740.

(*q*) Appendix II. Form 251.

(*r*) See *ante*, p. 429.

(*t*) See *ante*, p. 434.

(*tt*) See *ante*, p. 435.

(*u*) See *ante*, p. 444.

(*x*) See Appendix I.

(*y*) See Book II. cap. xiii. *ante*, p. 44.

(*z*) *Supra*.

the registrar to the solicitors of the parties, or to the plaintiff or his solicitor where no appearance has been entered (*a*).

Cross-actions  
may be heard  
together.

Sometimes, as we have pointed out on a previous page (*b*), where there are cross-actions, both are tried, by the direction of the Judge, at the same time and upon the same evidence (*c*).

Mode of  
trial.

As regards the *mode* of hearing Admiralty causes, it has already been seen (*d*) that "The County Courts Admiralty Jurisdiction Act, 1868," provides as follows:—

31 & 32 Vict.  
c. 71, s. 10.

"In an Admiralty cause in a County Court the cause shall be heard and determined in like manner as ordinary civil causes are now heard and determined in County Courts; save and except that in any Admiralty cause of salvage, towage, or collision, the County Court Judge shall, if he think fit, or on the request of either party to such cause, be assisted by two nautical assessors in the same way as the Judge of the High Court of Admiralty is now assisted by nautical assessors."—31 & 32 Vict. c. 71, s. 10.

From the enactments just referred to as to the mode of trial, it appears, then, that Admiralty causes in the County Court may be heard in the following various ways:—(1.) By the Judge alone. (2.) By the Judge with a jury. (3.) By the Judge and two nautical assessors (*f*). (4.) By the Judge and two mercantile assessors (*g*).

Conduct of  
the trial.

The mode of conducting the trial of an Admiralty cause in the County Court does not materially differ from the mode prevailing in ordinary actions. The reader is, therefore, referred, for more detailed information on the subject, to Book II., Chapter XIII., of the present treatise (*h*). A word or two as to one or two points will therefore suffice in this place.



Registrar of a County Court is receivable as evidence in any other County Court, saving all just exceptions (*k*).

At the conclusion of the trial, the verdict of the Judge or jury is given. Verdict.

When the verdict (if any) has been given, judgment is pronounced, or if there be no verdict one decision is given. A County Court Judge ought, in deciding a case, to give his reasons ; and the Court of Admiralty has expressed very great dissatisfaction where this has not been done (*l*). Judgment.

The question of costs arises for consideration.

If nothing is said as to costs, they will, it is submitted, follow the event, as is the case in ordinary actions (*m*). The Judge may refuse a successful party his costs, if it appears that two actions have been brought and tried, where one would have sufficed. The following rule of "The County Court Rules, 1875," provides for this :— Costs.  
Usually follow the event.

"Where it shall appear to the Court that the plaintiff in an Admiralty action (hereafter called the second action), was or is the defendant in an action (hereafter called the first action) in another Court arising out of the same transaction, and that he did not propose to the plaintiff in the first action that by agreement jurisdiction should be given to the Court in which the first action was instituted, to hear and determine the second action, the Judge may refuse the plaintiff in the second action his costs if he shall think fit."—Order XXXIII. r. 21. Order  
XXXIII.  
rule 21.

So also, as we have already seen (*n*), in actions for damage by collision, if the defendant neglects to give the notice of special defence referred to in Order XXXIII. r. 32 (*o*). The Judge "shall, in exercising his discretion as to costs, consider what effect the non-delivery of the notice has had in the action. Or if proper notice of defence not given.

As regards the scale of costs in Admiralty actions *in rem*, where the amount claimed does not exceed £20, the costs are allowed on the scale in actions above £20, unless the Judge shall be of opinion that proceedings *in rem* ought not to have been taken, and shall otherwise order ; and the costs of any proceedings special to Admiralty actions *in rem*, may be allowed on the principle of the scale of costs applicable to actions in general (*p*). On what scale costs are allowed.

The verdict of the Judge or jury having been given, judgment (*q*) is either pronounced at once or reserved. Judgment.

(*k*) 31 & 32 Vict. c. 71, s. 20, *ante*, p. 741.

(*l*) See *The Swallow*, 3 Mar. Law Cas. 371.

(*m*) See *ante*, p. 481, 482, Part I. Book II. cap. xiii.

(*n*) *Ante*, p. 770.

(*o*) *Ante*, p. 770.

(*p*) See Ord. XXXVI. r. 16, of "The County Court Rules, 1876," *post*, p. 780.

(*q*) For Form of Judgment or Order, see Appendix II. Form 245.

As in ordinary actions, so also in Admiralty causes, judgments may be either (1.) common ; or (2.) special.

(1.) Common judgments.

A common judgment, as already explained in a previous part of this work, is one which directs simply the payment of money or the return of property, and is thus complete in itself.

(2.) Special judgments.

A special judgment, on the other hand, is one which directs something beyond the mere payment of money or delivery of property.

#### SECTION X.—RECOVERY AND TAXATION OF COSTS.

Taxation of costs.

Costs in an Admiralty action are, speaking in general terms, taxed in the same way as in ordinary actions. For details of the practice, the former chapter on the subject must be consulted (*r*).

Power to frame a scale of costs.

Power to frame a scale of costs is conferred by the following section of "The County Courts Admiralty Jurisdiction Act, 1868," which enacts as follows :—

31 & 32 Vict.  
c. 71, s. 18.

"A scale of costs and charges in Admiralty causes in the County Courts shall be prescribed by General Orders."—31 & 32 Vict. c. 71, s. 18.

No particular scale has, however, been framed under the above enactment. The scale of costs applicable to ordinary actions in the County Court has been made applicable in Admiralty causes by certain of "The County Court Rules, 1876," which are framed under the power given by this enactment, and provide as follows with regard to the scale on which costs shall be allowed in Admiralty actions *in rem* :—

"County

"In Admiralty actions *in rem* where the amount claimed

### SECTION XI.—THE REGISTRATION OF DECREES AND ORDERS IN ADMIRALTY.

"The County Court Admiralty Jurisdiction Act, 1868," provides as follows with regard to the registration of decrees and orders in Admiralty :—

"Such decrees and orders of County Courts in Admiralty causes as General Orders shall direct shall be registered with the Registrar of County Court judgments in London in such manner as General Orders shall direct."—31 & 32 Vict. c. 71, s. 24.

Provision for registration of decrees, &c., of County Courts in Admiralty.  
31 & 32 Vict. c. 71, s. 24.

In pursuance of this enactment is the following rule of "The County Court Rules, 1875" :—

"A note of every judgment or order in an Admiralty action, . . . , shall within ten days of the making thereof be transmitted by the Registrar to the Registrar of County Courts judgments in London, who shall register the same as heretofore."—Order XXXVII. r. 52 (s).

Order XXXVII.  
rule 52.

### SECTION XII.—EXECUTION AND ENFORCEMENT OF JUDGMENTS.

The judgment of a County Court in an Admiralty action may, as might have been anticipated, be enforced by the County Court by which such judgment was given. And the enactments conferring jurisdiction in Admiralty on the County Courts arm them with full powers for the purposes of carrying out the judgments given by them. Not only, however, may the judgment of a County Court in Admiralty be enforced by a County Court Act, but if such judgment involves the sale of a vessel or property, the judgment may be removed by the defendant into the High Court, and enforced there.

Judgment of County Court in Admiralty enforceable either in County Court or the High Court if a sale ordered.

It will be convenient, therefore, to consider separately (1.) the enforcement of judgments by the County Court ; and (2.) the enforcement of judgments by the High Court.

First, as regards the enforcement of County Court judgments in Admiralty by the County Court itself.

Power to enforce their judgments in Admiralty is in general terms conferred upon the County Court in Admiralty by the following enactments :—

"The decree of the County Court in an Admiralty cause shall be enforced against the person or persons summoned as the defendant or defendants in the same manner as the decrees of the said Court are enforced in ordinary civil causes, save and except as in this Act otherwise provided."—31 & 32 Vict. c. 71, s. 12.

(1.) Enforcement of Admiralty judgments by the County Court.

General jurisdiction of County Courts to enforce Admiralty judgments.  
31 & 32 Vict. c. 71, s. 12.

(s) See this rule in full, *ante*, p. 587.

31 & 32 Vict.  
c. 71, s. 23. "For the execution of any decree or order of a County Court in an Admiralty cause the Court may order, and the Registrar on such order may seal and issue, and any officer of any County Court may execute, process according to general orders; provided that where under such process a vessel or property would or might be sold then, if the owner of the vessel or property desires that the sale should be conducted in the High Court of Admiralty instead of in the County Court, he shall be entitled, on security for costs being first given, and subject and according to such other provisions as general orders direct, to obtain an order (*t*) of the County Court for transfer of the proceedings for sale, with or without (as the Judge of the County Court thinks fit) the transfer of the subsequent proceedings in the cause, to the High Court of Admiralty, which Court shall have jurisdiction and all powers and authorities relating thereto accordingly."—31 & 32 Vict. c. 71, s. 23.

How execution may be obtained if defendant be known.

In cases where the defendant in the action is *known*, a warrant of execution under the above enactments may be obtained by attendance at the Registrar's office, and there filing a præcipe for a warrant of execution (*u*), and paying a fee of 5*s.*, if the amount for which execution is levied do not exceed £100, or of 7*s.* 6*d.*, if it exceed that sum.

Forms.

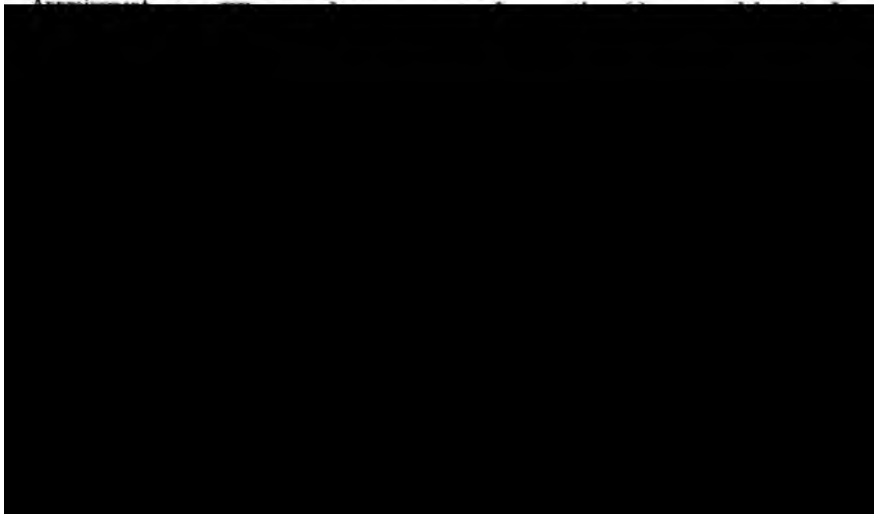
The form of a præcipe for a warrant of execution is supplied in the Appendix of Forms (*x*). A form of warrant of execution also is provided (*y*).

By whom warrant is executed.

The warrant of execution when issued is executed by the High Bailiff of the Court, as in other cases of executions.

How warrant executed.

If the defendant be a *known* person, "The County Court Rules, 1875," contain the following provisions with regard to the execution of the warrant.



"by him, together with the certificate of appraisement signed  
"by the appraiser."—Order XXXIII. r. 27.

"On the completion of the purchase the High Bailiff shall  
"deliver up the property to the purchaser, and if required so  
"to do, shall execute a bill of sale to him at the expense of the  
"purchaser."—Order XXXIII. r. 28.

It sometimes happens that more than one action is instituted  
against a vessel or any property. In such cases, if the vessel  
or property in dispute has been sold the proceeds of the sale will  
be retained by the Court, "*unless the Judge shall otherwise  
order.*" On this subject "The County Court Rules, 1875,"  
provide as follows :—

"Where more than one action has been instituted against a  
"vessel or any property, and the same has been sold, the pro-  
"ceeds thereof shall be retained in Court, to abide the decision  
"of the Court in the various actions, unless the Judge shall  
"otherwise order."—Order XXXIII. r. 36.

It sometimes happens that a judgment or order is obtained  
against an *unknown* defendant. When this occurs, the vessel  
or property to which the action relates, is not taken in execu-  
tion, but the decree of the Court is enforced in the manner  
pointed out by the following rule of "The County Court Rules,  
1875" :—

"Where a judgment or order has been obtained against an  
"unknown defendant, the vessel or property to which the  
"action relates shall not be taken in execution, but it may be  
"arrested and detained under the provisions of section 22 of  
"‘The County Courts Admiralty Jurisdiction Act, 1868’ (a),  
"or kept under arrest, if already arrested."—Order XXXIII.  
r. 23.

If the name of the *unknown* defendant be subsequently  
ascertained, the steps indicated by the following rules of "The  
County Court Rules, 1875," may be taken by the party seeking  
to enforce the judgment or order :—

"Where an order has been obtained in an action against an  
"unknown defendant, and the name of the defendant is sub-  
"sequently ascertained, the adverse solicitor may deliver to the  
"Registrar a præcipe stating the name, address, and descrip-  
"tion of the defendant, and thereupon the Registrar shall  
"issue to the solicitor, or if required to the bailiff for service,  
"a notice of the judgment or order, stating that if the defen-  
"dant does not within four clear days from the day of service  
"deliver a præcipe to the Registrar applying for a re-hearing  
"of the action, the vessel or property to which the action  
"relates will be sold in execution."—Order XXXIII. r. 24.

"The notice shall be served personally upon the defen-  
"dant, unless the Judge, or in his absence the Registrar, shall

Order  
XXXIII.  
rule 27.

Transfer of  
property to  
purchaser.

Order  
XXXIII.  
rule 28.

If more than  
one action  
pending,  
proceeds  
retained in  
Court.

Order  
XXXIII.  
rule 36.

If defendant  
be *unknown*  
an execution  
cannot be  
issued.

Order  
XXXIII.  
rule 23.

Proceedings  
on subsequent  
discovery of  
unknown  
defendant.

Order  
XXXIII.  
rule 24.

Order  
XXXIII.  
rule 25.

(a) See *ante*, p. 772.

(2.) Enforcement of Admiralty judgments of a County Court by the High Court.

31 & 32 Vict. c. 71, s. 23.

When application can be made.

How application is made.

Order XXXIII. rule 30.

“upon facts duly verified upon affidavit allow of substituted “service.”—Order XXXIII. r. 25.

Secondly, the judgment of a County Court, given in an Admiralty action, may, at the instance of the defendant, be enforced by the High Court, if it involves the sale of a vessel or property.

On this subject “The County Courts Admiralty Jurisdiction Act, 1868,” enacts as follows :—

“Where, under . . . process, a vessel or property would “or might be sold, then if the owner of the vessel or property “desires that the sale should be conducted in the High Court “of Admiralty instead of in the County Court, he shall be “entitled, on security for costs being first given, and subject “and according to such other provisions as general orders “direct, to obtain an order of the County Court for transfer of “the proceedings for sale, with or without (as the Judge of the “County Court thinks fit) the transfer of the subsequent proceedings in the cause, to the High Court of Admiralty, which “Court shall have jurisdiction and all powers and authorities “relating thereto accordingly.”—31 & 32 Vict. c. 71, s. 23.

An application for a transfer under the above enactment, can only be made after judgment, and only, too, in cases where a sale of a vessel or property is involved in the judgment.

The application is made to the County Court Judge, and is regulated by the following rule :—

“A solicitor desiring that the sale of any vessel or property “should be conducted in the High Court of Justice, may at “any time *after judgment* give security to the amount of £10, “and deliver to the Registrar an application for an order for “the transfer of the proceedings for sale to the said Court.”—Order XXXIII. r. 30.

## BOOK IV.

### JURISDICTION AND PROCEEDINGS IN ADMIRALTY AND PROBATE MATTERS.

#### CHAPTER VI.

##### APPEALS IN ORDINARY ADMIRALTY ACTIONS.

FROM the date of the first constitution of County Courts in Admiralty, under "The County Courts Admiralty Jurisdiction Act, 1868," an appeal from these Courts to the High Court of Admiralty, or—as it is now styled—the Probate, Divorce, and Admiralty Division of the High Court of Justice, has always existed in all cases involving a judgment for more than £50. Previously to the passing of "The County Courts Act, 1875" (*a*), the appeal was brought by "instrument of appeal," whatever this may be (*b*). But "The County Courts Act, 1875," introduced (as we have seen (*a*)) a new mode of appeal, by way of motion, in all cases. Following the arrangement adopted in the Chapter on Appeals in ordinary cases (*c*), it is proposed in the present chapter to consider—I. In what cases an appeal lies. II. Appeals by instrument of appeal. III. Appeals by motion.

Right of appeal and two different modes of appealing.

##### SECTION I.—WHEN AN APPEAL LIES.

Speaking generally, an appeal will lie from *every final* decree or order of a County Court Judge in an Admiralty cause, where the amount decreed or ordered to be due exceeds the sum of £50 (*d*), and also by *permission of the Judge*, from any interlocutory decree or order therein.

In respect of what matters an appeal will lie.

"The County Courts Admiralty Jurisdiction Act, 1868," provides as follows :—

"An appeal may be made to the High Court of Admiralty 31 & 32 Vict.  
"of England from a final decree or order of a County Court in c. 71, s. 26.

(*a*) See sect. 6 of "The County Courts Act, 1875," set out in full, *ante*, p. 574.

(*b*) As to what this expression means, see *infra*, p. 791.

(*c*) See *ante*, Book II. cap. xvii. p. 574 *et seq.*

(*d*) The restriction of the right of appeal to cases exceeding £50 or upwards if contained in a separate section of the Act. See 31 & 32 Vict. c. 71, s. 31, *infra*.

"an Admiralty cause, and, by permission of the Judge of the County Court, from any interlocutory decree or order therein, on security for costs being first given, and subject to such other provisions as general orders shall direct."—31 & 32 Vict. c. 71, s. 26.

In respect of what matters an appeal will *not* lie.

(1.) Not where judgment for less than £50.

31 & 32 Vict. c. 71, s. 31.

Construction of above enactment.

Question whether the pecuniary limit created by Act only applies if defendant appeals.

Let us next see in respect of what matters an appeal will *not* lie. Speaking generally, all appeals in admiralty actions will be discouraged unless the Court below has grossly erred (*ad*).

First, an appeal will not lie where the amount decreed or ordered to be due does not exceed the sum of £50. This limit is imposed by the following section of "The County Courts Admiralty Jurisdiction Act, 1868"—

"No appeal shall be allowed unless the amount decreed or ordered to be due exceeds the sum of fifty pounds."—31 & 32 Vict. c. 71, s. 31.

It is to be noticed, that, to satisfy the requirements of this section, it is not sufficient that the amount decreed or ordered to be due *amounts to* £50; but it is necessary that such amount should *exceed* £50. Moreover, it is also to be observed, that "*the amount decreed or ordered to be due*" is made the test of whether an appeal will lie, and *not the amount claimed*.

It has been the subject of much discussion whether the remaining restriction, on appeals created by the above section, applies to *all* appeals—including appeals by plaintiffs—or only to appeals by defendants. In the case of *The Docter Van Thunnen Tellou (c)*, it was held that the above section restricting the right of appeal to cases where over £50 is adjudged, applies to appeals *by defendants only*, and not where *the plaintiff* is the appellant. In this case the appeal was from a final judgment in a cause of salvage in the City of London Court, where two suits by separate sets of salvors were heard



of £30, was, after having been heard on the merits, dismissed with costs. The plaintiff appealed. At the hearing of the appeal the respondent objected to the jurisdiction of the Court to entertain the appeal. The Court dismissed the appeal, on the ground that, as the appellant, if successful, could not have recovered more than £30 in the action, he was precluded from appealing by the 31st section of "The County Courts Admiralty Jurisdiction Act, 1868." Now, in this case, it is obvious that Sir R. Phillimore expressly decided that section 31 does apply to appeals *by plaintiffs*, equally with appeals *by defendants*. For otherwise, he would have held that the plaintiff had a right of appeal, irrespective of the amount claimed or recovered. In giving judgment, he says (i): "The question is, whether, taking the true construction of the 31st section of 'The County Courts Admiralty Jurisdiction Act, 1868,' into consideration, he has or has not the right to appeal. \* \* \* "I have no hesitation in saying that it appears to me that the whole purport of this statute shows it to have been the intention of the statute to exclude appeals where the sum sought to be recovered is under £50. "The question is whether that construction can be put upon these words. Upon this question I will refer to two cases that have been cited. The case of *The Docter Van Thunnen Tellow* (k) is one, the other is the case of *The Elizabeth* (kk). I have no note of my judgment in the case of *The Docter Van Thunnen Tellow* (l), but in the judgment in that case, as reported in the Maritime Law Cases, I am represented to have said: 'The enactment is badly drawn, but in my opinion the 31st section must be held to apply to appeals where an amount has been decreed to be due—that is to say, to appeals by defendants only.' It is clear that was an extra-judicial dictum (l), and not necessary for the decision of that case. At all events, after giving the best construction I can to the section, I am bound to decide this question: Can the plaintiff in this case, who has entered his action in £30, appeal from the decision of the Judge of the City of London Court to this Court? I fully see the difficulty in the way of putting a satisfactory construction on the section in question, but looking to the whole purport of the Act, and endeavouring to construe the section to the best of my ability, and having a strong opinion that it was the intention of the legislature to exclude all appeals where the sum sought to be recovered did not exceed £50, I think that I must rule that there is no appeal in this case. I do so, on the ground that the plaintiff, having brought his action for £30,

(i) L. R. 3 P. Div. at p. 101.

(k) 17 W. R. 899; 3 Mar. Law Cas. 244.

(kk) L. R. 3 A. & E. 33.

(l) It is submitted that the expression which the learned Judge considers to have been *extra-judicial* can hardly be so treated, as the very point before the Court was whether a plaintiff could appeal when less than £50 was claimed.

could by no process whatever have got a decree or order for an amount which would have exceeded £30. I do not disguise from myself the difficulty of the construction of the statute; but, upon the whole, I think that the construction I have placed on it is the reasonable construction to arrive at. I give no costs because the case is one of considerable difficulty."

Such being the decision in *The Falcon*, it must now be taken as law that section 31 of "The County Courts Admiralty Jurisdiction Act, 1868," applies alike to appeals *by plaintiffs* as to appeals *by defendants*. This result presses somewhat hardly upon defendants. For while, on the one hand, a plaintiff who wholly fails in the Court below can appeal if he *could* have recovered more than £50 in the County Court. On the other hand, the defendant's right of appeal is limited to cases where the *amount decreed or ordered* to be due exceeds the sum of £50.

How amount  
is ascertained  
for purposes  
of Appeal.

As to what is an "*amount decreed or ordered*" within the meaning of the 31st section of "The County Courts Admiralty Jurisdiction Act, 1868," it has been held that no appeal lies from the decision of a County Court Judge in a salvage case where there is a tender of less than £50, and that tender is upheld, the amount *tendered* being "*the amount decreed or ordered*" within that section (*m*).

It has been seen (*mm*) that *cross suits for damage* may be heard together. It has been held, however, that, for the purposes of *appeal*, they are to be considered as distinct (*n*). Where, therefore, two such suits had been instituted, and, in one of them, the plaintiff recovered *less than* £50, and, in the other, the suit was dismissed, it was held that there was no appeal in the former suit (*o*).

(2.) No ap-

Next, there is no appeal from any interlocutory appeal or

It is to be noticed that the agreement contemplated by this section must be *in writing*, and signed by the parties "*or by their attorneys or agents.*" The agreement may, with the necessary or verbal modifications, be in the form used in ordinary cases (g).

Form of agreement.

Such being the matters which may be the subject of an appeal, it remains to consider the *grounds* on which an appeal may be brought.

On what grounds an appeal will lie.

It has been seen that the enactments governing appeals in ordinary actions determined in the County Court, expressly state *the grounds* on which appeals in such cases will lie. But in the enactments relating to appeals in Admiralty cases, there is no indication of any express grounds limiting the general right of appeal. And, consequently, appeals will lie in such cases, whether the determination complained of be on a question of *law* or on a question of *fact*.

## SECTION II.—APPEALS BY INSTRUMENT OF APPEAL.

As already has been mentioned, there now exist two modes of appeal in Admiralty actions in the County Courts. The first of these two modes of appeal is by instrument of appeal, and it is with this that it is proposed to deal in the present chapter.

Mode of appeal by instrument of appeal.

The appeal from a County Court in Admiralty is (save in cases arising within the Cinque Ports (r), by the section giving the appeal—section 26 of "The County Courts Admiralty Jurisdiction Act, 1868" (s)—directed to be to "The High Court of Admiralty of England." And "The Judicature Acts," although they have transferred the jurisdiction of the High Court of Admiralty to the Probate, Divorce, and Admiralty Division of the High Court of Justice, have not taken appeals from County Courts in Admiralty away from such jurisdiction.

The appeal generally lies to the Admiralty Division of the High Court.

And, consequently, the Probate, Divorce, and Admiralty Division of the High Court, now exercises the power formerly vested in the Court of Admiralty, to hear and determine County Court Admiralty appeals (t). For while, on the one hand, the 32nd section of "The Jurisdiction Act, 1873," expressly excepts from the jurisdiction of the Chancery Division the hearing of appeals from County Courts; on the other hand, that same section assigns to the Probate, Divorce, and Admiralty Division

(g) Appendix II. Form 97, using the heading in the Admiralty action, and for the words "under the provisions of sect. 69 of 'The County Courts Act, 1856,'" substituting the words "under the provisions of the section 28 of 'The County Courts Admiralty Jurisdiction Act, 1868.'"

(r) As to such cases see *infra*.

(s) See this section in full, *ante*, p. 785-786.

(t) *The Two Brothers*, L. R. 1 P. D. 62, 64, 65.

of the High Court, without any such words of exception, "All causes and matters which would have been within the exclusive cognizance of the Court of Probate, or the Court for Divorce and Matrimonial causes, or of the High Court of Admiralty, if this Act had not passed." Accordingly, it has been held, that, as this paragraph of the 32nd section does not expressly except County Court appeals from the jurisdiction of the Probate, Divorce, and Admiralty Division of the High Court, such appeals are included as in the category of causes and matters to be assigned (*u*). And that the Court of Appeal from Inferior Courts, established by section 45 of "The Judicature Act, 1873," has, therefore, no jurisdiction to entertain Admiralty appeals from the County Courts (*x*). And, now, by Order LVIII. rule 19, of the Rules of the Supreme Court, Admiralty appeals from Inferior Courts are, until further order, expressly assigned "as heretofore, to the present Judge of the Admiralty Court."

Appeal in cases within the Cinque Ports lies to Court of Admiralty of the Cinque Ports.  
31 & 32 Vict. c. 71, s. 33.

In cases arising within the jurisdiction of the Cinque Ports, an appeal lies, however, to the Court of Admiralty of the Cinque Ports. This is provided by the following section of "The County Courts Admiralty Jurisdiction Act, 1868" :—

"In all cases which shall arise within the jurisdiction of the Cinque Ports as defined by the Act First and Second George the Fourth, chapter seventy-six, section eighteen, causes may be transferred by the County Court and appeals made to the Court of Admiralty of the Cinque Ports in lieu of the High Court of Admiralty; and in the case of appeals the instrument of appeal shall be lodged in the registry of the Cinque Ports (*y*), and the same discretion vested in the Judge official and commissary of the said Cinque Ports Court as is by this

Inasmuch, however, as the security must be given before the appeal can be lodged, and the instrument of appeal is required to be lodged within ten days after the decision complained of, it is obvious that security should, in all cases, be given as speedily as possible, and must at the very latest be given within ten days from the delivery of the judgment appealed from.

As regards the mode of giving security on an appeal, it has been held that this security must not be given in the High Court, but in the County Court (*b*). The security may either be by deposit of money or by bond. And in whichever of these two modes it is given, full directions as to the practice will be found in an earlier page (*c*).

How security given.

The appellant, after having duly given security, must next proceed to lodge an instrument of appeal in the registry of the Court to which the appeal is made (*d*). This is required by the following section of "The County Court Admiralty Jurisdiction Act, 1868"—

Instrument of appeal must next be lodged.

"No appeal shall be allowed unless the instrument of appeal is lodged in the registry of the High Court of Admiralty within ten days from the date of the decree or order appealed from, but the Judge of the High Court of Admiralty of England may, on sufficient cause being shown to his satisfaction for such omission, allow an appeal to be prosecuted, notwithstanding that the instrument of appeal has not been lodged within that time."—31 & 32 Vict. c. 71, s. 27.

31 & 32 Vict. c. 71, s. 27.

As regards the *form* of the instrument of appeal mentioned in section 27 (*e*), it is to be noticed that its nature is not specified in the Act or in "The County Court Rules, 1875." But it has been stated that it should be some instrument of appeal which certifies that the appeal is to be made to the High Court (*f*).

Form of the instrument of appeal.

The instrument of appeal, it is to be noticed, must not be lodged in the County Court. But if the appeal is to the High Court, it must be lodged there in accordance with the above section. If, however, the appeal be to the Court of Admiralty of the Cinque Ports, the instrument of appeal must be lodged in the registry of the Cinque Ports (*g*).

The section just set out (section 27), it is seen, gives power to the High Court, *not to the County Court*, to allow an appeal to be prosecuted, "notwithstanding that the instrument of appeal has not been lodged" within the time limited by the above section.

Power to dispense with instrument of appeal.

(*b*) *The Forest Queen*, 40 L. J. N. S. Adm. 17.

(*c*) See as to the practice, *ante*, p. 378 *et seq.*

(*d*) *I. e.* if the appeal be to the High Court in the Registry of the Admiralty Divisions (s. 27 of 31 & 32 Vict. c. 71), or if the appeal be to the Cinque Ports in the Registry of the Court of Admiralty of the Cinque Ports (s. 33 of 31 & 32 Vict. c. 71, *supra*).

(*e*) *The Two Brothers*, 1 P. D. 62; 45 L. J. P. D. & A. 47; 33 L. T. 792.

(*f*) *The Amstel*, 2 P. D. 186.

(*g*) See 31 & 32 Vict. c. 71, s. 33, *ante*, p. 790.

It has been held that the provisions of this section are not overruled by "The Judicature Act," and that leave to appeal from a judgment of a County Court Judge in an Admiralty action must be obtained from a Judge of the Probate, Divorce, and Admiralty Division (*h*). And it has also been recently held that, the power of extending the time for appealing, conferred by the above section, may, since "The Judicature Act, 1873," be exercised by the Judge of the Court of Admiralty, sitting as a Judge of the High Court of Justice (*i*). It seems that there is no appeal from his decision if he considers that there is not sufficient cause for enlarging the time (*i*).

In cases where the appeal is made to the Court of Admiralty of the Cinque Ports, it is provided by "The County Courts Admiralty Jurisdiction Act, 1868," that *the same* discretion shall be "vested in the Judge official and commissary of the said Cinque Ports Court, as is by this Act vested in the Judge of the High Court of Admiralty" (*k*). Consequently, in such cases, applications to enlarge the time for depositing the instrument of appeal must be addressed to the said "*Judge official and commissary*."

Hearing of  
the appeal.

The hearing of the appeal involves one or two points, which require to receive attention from the practitioner, and will accordingly be now mentioned.

Before Judge.

First, as to the tribunal to hear the appeal. Appeals to the High Court are usually heard before one of the Judges of the Probate, Admiralty, and Divorce Division sitting alone. And appeals to the Court of Admiralty of the Cinque Ports are, in a similar way, heard before the Judge official and commissary of the Cinque Ports.

Or in certain  
cases before

It has, however, been seen (*l*), on an earlier page, that Admiralty causes are sometimes heard by the County Court.

(1.) that it only applies to cases where the hearing in the County Court has been with *nautical assessors*, and not where it has been with *mercantile assessors*, or by the Judge alone ; and (2.) that, in the case indicated by the section, the summoning of the elder brethren of the Trinity House is discretionary with the Judge, on application made to him by either of the parties.

With regard to cases where the appeal is laid before the Court of Admiralty of the Cinque Ports, it is sufficient to remark, that it will, it is presumed, take place before the Judge official and commissary of the said Court (*m*).

Next, as to the evidence received on the hearing of an appeal from a County Court in Admiralty. The evidence at the hearing of Admiralty appeals is not usually taken *vivâ voce*. But the Court of Appeal may order witnesses to be examined *vivâ voce* at the hearing of the appeal (*o*). But such order will not be made except under special circumstances (*p*). Where there are no shorthand notes available for the appeal, and the Judge below has taken no notes, the Admiralty Court has ordered the evidence on the appeal to be taken *vivâ voce* (*q*).

How evidence is received on an appeal.

When there is an appeal from the County Court in an Admiralty cause, the Court always likes to know the reasons upon which the decision of the County Court rests. And, in the case of *The Swallow* (*r*), where no reasons were stated by the Judge of the County Court, the divisional Judge of appeal, and also, on an appeal from him, the Court of Appeal, expressed their great dissatisfaction.

Reasons for judgment of Court below should appear.

The judgment of the Court on the hearing of the appeal may be a simple judgment for the appellant, or for the respondent to the appeal.

Judgment.

Where, however, the judgment as it stands involves the sale of a vessel or other property, the Judge has power to direct the proceedings to be transferred into the Court of Admiralty, for "The County Courts Admiralty Jurisdiction Act, 1868," enacts :—

Transfer of the sale of property may be directed.

"On an appeal under this Act, the Judge of the High Court of Admiralty, if it appears to him expedient that any sale decreed or ordered to be made of the vessel or property to which the cause relates should be conducted in the High Court of Admiralty instead of in the County Court from which the appeal is brought, may direct the transfer of the proceedings for sale, with or without the transfer of the subsequent proceedings in the cause, to the High Court of

31 & 32 Vict. c. 71, s. 32.

(*m*) See 31 & 32 Vict. c. 71, s. 33, *ante*, p. 790.

(*o*) *The Busy Bee*, L. R. 3 Ad. & Eccl. 527. See also *The Susan Elizabeth*, 4 Mar. Law Cas. 79.

(*p*) *Ib.*

(*q*) See *The Susan Elizabeth*, 4 Mar. Law Cas. 79.

(*r*) 3 Mar. Law Cas. 371, 372 (1875—1878).

"Admiralty, which Court shall have jurisdiction, and all powers and authorities relating thereto accordingly."—31 & 32 Vict. c. 71. s. 32.

**Costs.**

With regard to the costs of the appeal, they follow the event, unless the Court otherwise orders.

**Costs of appeal.**

For "The County Courts Admiralty Jurisdiction Act, 1868," enacts that :—

31 & 32 Vict.  
c. 71, s. 30.

"On an appeal under this Act, when the appellant is unsuccessful, he shall pay the costs of the appeal, unless the appellate Court shall otherwise direct."—31 & 32 Vict. c. 71, s. 30.

**Appeals to Queen in Council from decision of Admiralty Division.**

By leave if judgment below affirmed, without leave if judgment below reversed.

38 & 39 Vict.  
c. 50, s. 10.

Formerly, there was no appeal to the Queen in Council from a decree or order of the High Court of Admiralty, made on an appeal from the County Court, in any case, except by *express* permission of the Judge of the High Court of Admiralty (*rr*). Now, however, an appeal to the Queen in Council lies, without any permission, where the judgment of the County Court has been altered on appeal; and, in other cases, it lies by the express permission of the Judge of the Admiralty Court. This change has been effected by "The County Courts Act, 1875," which enacts that :—

"There shall be no appeal from a decree or order of the High Court of Admiralty of England made on appeal from the County Court when such decree or order affirms the judgment of the County Court, except by express permission of the Judge of the High Court of Admiralty (*s*). When upon an appeal the High Court of Admiralty alters the judgment of the County Court no leave to appeal to Her Majesty in Council shall be necessary."—38 & 39 Vict. c. 50, s. 10.



Court in Admiralty cases, the motion must be made to a Judge of the Probate, Divorce, and Admiralty Division of the High Court. For, "The County Courts Act, 1875," contemplates the High Court of Admiralty—for that Court is still the only Court of Appeal from the Admiralty jurisdiction of the County Courts (x).

It has recently been held that, in Admiralty appeals from the County Court, where there are no shorthand writer's notes of the evidence, and no notes taken by the Judge of the County Court, available for purposes of appeal, the High Court (Probate, Divorce, and Admiralty Division), will order the appeal to be heard on *vivâ voce* evidence (y).

(x) *Per* Sir R. Phillimore in *The Brothers*, L. R. 1 P. D. 52, 56.

(y) *The Confidence*; *The Susan Elizabeth*, 4 Mar. Law Cas. 79.

## BOOK IV.

### JURISDICTION AND PROCEEDINGS IN ADMIRALTY AND PROBATE MATTERS.

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#### CHAPTER VII.


##### JURISDICTION AND PROCEEDINGS IN CLAIMS TO SALVAGE UNDER "THE MERCHANT SHIPPING ACTS."

Statutory  
jurisdiction  
as to salvage  
is conferred  
by the Mer-  
chant Ship-  
ping Acts  
distinct from  
the general  
Admiralty  
jurisdiction.

It has already been seen, when considering the jurisdiction of County Courts in Admiralty (*a*), that under "The County Courts Admiralty Jurisdiction" Acts of 1868 and of 1869, County Courts on which jurisdiction in Admiralty has been conferred possess a general jurisdiction over "any claim for salvage" where the property saved does not exceed £1,000 in value, and the claim for salvage does not itself exceed £300. In addition to this general jurisdiction, there exists, however, a special statutory jurisdiction as to salvage causes which is conferred by and exercised under "The Merchant Shipping Act, 1854," as amended and added to by subsequent legislation.

Special  
statutory  
jurisdiction

The special statutory jurisdiction as to salvage matters which is conferred by "The Merchant Shipping Act, 1854," and the amending Acts thereto, appears to be conferred with regard to



"In the following cases (that is to say.)

"Whenever any ship or boat is stranded or otherwise in distress on the shore of any sea or tidal water situate within the limits of the United Kingdom

In what cases salvage shall be payable.

"and services are rendered by any person,

*Merchant Shipping Act, 1854, s. 458.*

"(1.) In assisting such ship or boat ;

"(2.) In saving the lives of the persons belonging to such ship or boat ;

"(3.) In saving the cargo or apparel of such ship or boat or any portion thereof ;

"And whenever any wreck is saved by any person other than a receiver (b) within the United Kingdom ;

"There shall be payable by the owners of such ship or boat, cargo, apparel or wreck, to the person by whom such services, or any of them, are rendered, or by whom such wreck is saved, a reasonable amount of salvage, together with all expenses properly incurred by him in the performance of such services or the saving of such wreck, the amount of such salvage and expenses (which expenses are herein-after included under the term salvage) to be determined, in case of dispute, in manner hereinafter mentioned."—17 & 18 Vict. c. 104, s. 458.

"Salvage in respect of the preservation of the life or lives of any person or persons belonging to any such ship or boat as aforesaid shall be payable by the owners of the ship or boat in priority to all other claims for salvage ; and in cases where such ship or boat is destroyed, or where the value thereof is insufficient, after payment of the actual expenses incurred, to pay the amount of salvage due in respect of any life or lives, the Board of Trade may in its discretion award to the salvors of such life or lives, out of the Mercantile Marine Fund, such sum or sums as it deems fit, in whole or part satisfaction of any amount of salvage so left unpaid in respect of such life or lives."—17 & 18 Vict. c. 104, s. 459.

Salvage for saving life to have priority over other claims.

*Merchant Shipping Act, 1854, s. 459.*

The nature of salvage payable under the Act having been thus defined, "The Merchant Shipping Act, 1854," proceeds to provide machinery for the summary settlement of disputes as to the amount of salvage in such cases. The enactments providing this machinery have been added to and varied by subsequent legislation, and the jurisdiction originally given to two Justices has by such latter legislation been also conferred upon Judges of County Courts. The existing statute law on the subject is now contained in the enactments following :—

How disputes as to salvage to be settled.

"Disputes with respect to salvage arising within the

(b) As to receivers see sect. 439 of the Act.

*Merchant  
Shipping  
Act, 1854,  
s. 460.*

- “ boundaries of the Cinque Ports shall be determined  
“ in the manner in which the same has hitherto been  
“ determined ; but whenever any dispute arises else-  
“ where in the United Kingdom between the owners  
“ of any such ship, boat, cargo, apparel, or wreck as  
“ aforesaid, and the salvors, as to the amount of  
“ salvage, and the parties to the dispute cannot agree  
“ as to the settlement thereof by arbitration or  
“ otherwise,  
“ Then if the sum claimed does not exceed two hundred  
“ pounds (*c*), such dispute shall be referred to the  
“ arbitration of any two justices of the peace resident  
“ as follows ; (that is to say,)  
“ In case of wreck, resident at or near the place  
“ where such wreck is found :  
“ In cases of services rendered to any ship or boat,  
“ or to the persons, cargo, or apparel belong-  
“ ing thereto, resident at or near the place  
“ where such ship or boat is lying, or at or  
“ near the first port or place in the United  
“ Kingdom into which such ship or boat is  
“ brought after the occurrence of the accident  
“ by reason whereof the claim to salvage  
“ arises :  
“ But if the sum claimed exceeds two hundred pounds (*d*),  
“ such dispute may, with the consent of the parties,  
“ be referred to the arbitration of such justices as  
“ aforesaid ; but if they do not consent, shall, in  
“ England, be decided by the High Court of Ad-  
“ miralty of England, in Ireland by the High Court  
“ of Admiralty of Ireland, and in Scotland by the

amends the jurisdiction created by the above sections of "The Merchant Shipping Act, 1854," and extends it to the Judges of County Courts by sections, which are in the following terms :—

"The provisions contained in the Eighth Part of the principal Act for giving summary jurisdiction to two justices in salvage cases, and for preventing unnecessary appeals and litigation in such cases, shall be amended as follows (that is to say,)

as to salvage created by "The Merchant Shipping Act, 1854," amended and extended to Judges of County Courts. *The Merchant Shipping Act, 1862, s. 49.*

- "(1.) Such provision shall extend to all cases in which
  - "the value of the property saved does not exceed one thousand pounds, as well as to the cases provided for by the principal Act :
- "(2.) Such provisions shall be held to apply whether the salvage service has been rendered within the limits of the United Kingdom or not :
- "(3.) It shall be lawful for one of Her Majesty's principal Secretaries of State, or, in Ireland, for the Lord-lieutenant or other chief governor or governors, to appoint out of the justices for any borough or county a rota of justices by whom jurisdiction in salvage cases shall be exercised :
- "(4.) When no such rota is appointed, it shall be lawful
  - "for the salvors, by writing addressed to the justices' clerk, to name one justice, and for the owner of the property saved, in like manner, to name the other :
- "(5.) If either party fails to name a justice within a reasonable time, the case may be tried by two or more justices at petty sessions :
- "(6.) It shall be competent for any stipendiary magistrate, and also in England for any County Court Judge, in Scotland for the sheriff or sheriff substitute of any county, and in Ireland for the recorder of any borough in which there is a recorder, or for the chairman of quarter sessions in any county, to exercise the same jurisdiction in salvage cases as is given to two justices :
- "(7.) It shall be lawful for one of Her Majesty's principal Secretaries of State to determine a scale of costs to be awarded in salvage cases by any such justices or Court as aforesaid :
- "(8.) All the provisions of the principal Act relating to summary proceedings in salvage cases, and to the prevention of unnecessary appeals in such cases, shall, except so far as the same are altered by this Act, extend and apply to all

“such proceedings, whether under the principal Act, or this Act, or both of such Acts.”—  
25 & 26 Vict. c. 63, s. 49.

*Quere,*  
whether this  
jurisdiction  
is limited  
to County  
Courts in  
Admiralty.

In an earlier page of this work (*e*) it has been pointed out that it may be open to argument whether the effect of section 2 (*f*) and section 5 (*f*) of “The County Courts Admiralty Jurisdiction Act, 1868,” be not to take away jurisdiction under “The Merchant Shipping Act” from all County Courts which are not named in the Orders in Council appointing certain County Courts to exercise Admiralty jurisdiction. It certainly will be more convenient, in *all* cases of dispute as to salvage, to apply to the Judge of a County Court *specially appointed* to have Admiralty jurisdiction. And in the present state of the law it will also be much *safer* to do so. For, until section 5 of “The County Court Admiralty Jurisdiction Act, 1868” (*g*), has received a judicial interpretation, it will be hazardous to assert either, on the one hand, that the Judge of a County Court *not* appointed to have Admiralty jurisdiction in certain cases, *or*, on the other hand, that only the Judge of a County Court appointed to have Admiralty jurisdiction, can adjudicate in such cases.

And this  
jurisdiction  
is vested in  
the Judge,  
not in the  
Court.

It is important, both as throwing some light upon the question whether or not jurisdiction under “The Merchant Shipping Acts” be exercised by Judges of County Courts which do not possess Admiralty jurisdiction, and also in all matters of actual practice arising under “The Merchant Shipping Acts,” to note that the County Court jurisdiction under “The Merchant Shipping Acts” is in terms (*h*) conferred *not* upon “the County Court,” but upon “the County Court *Judge*” (*i*).

What is a  
“dispute”

It is necessary to the existence of jurisdiction under the enactments just set out, that there should exist “a dispute”

being given to the Judge, and not to the Court (*l*). Both objections to the jurisdiction were, however, over-ruled, it being held that the fact of there having been a sum agreed between the parties did not oust the jurisdiction of the County Court Judge, who could set aside the agreement if it were an unreasonable one, and that the proceedings were proper in form (*l*). It is to be noted that "The Merchant Shipping Act Amendment Act, 1862," enlarges the pecuniary limit fixed by the Act of 1854, and extends the summary jurisdiction to all cases where the value of the property saved does not exceed £1,000.

Where the claim exceeds £1,000 the County Court has no jurisdiction, but the *onus probandi* as to value is upon the person objecting to the jurisdiction of the County Court (*m*). And the estimate of the value must be made when the property is brought by the salvors into a place of safety (*n*). Moreover, the "sum claimed" means the sum claimed *before* any legal proceedings are commenced (*o*). And the sum in dispute is not measured by the limit of the amount awarded by the Court below (*p*).

How amount in dispute is measured.

It appears that the Admiralty Division of the High Court, by virtue of "The County Courts Admiralty Jurisdiction Act, 1868" (31 & 32 Vict. c. 71) (*q*), has now a *concurrent* jurisdiction with the County Courts in cases where the amount of salvage claimed is under £1,000 (*r*). Whereas, under "The Merchant Shipping Act, 1862," the jurisdiction of the Admiralty Court was excluded in those cases where the justices and County Courts possessed it (*s*).

Jurisdiction is concurrent with that of the Admiralty Division.

Cases arising within the jurisdiction of the Cinque Ports are, it will be noted, in terms excluded from the jurisdiction created by the sections of "The Merchant Shipping Act" above set out (*ss*).

Exclusion from jurisdiction of cases within the Cinque Ports.

Secondly, in addition to the jurisdiction which it possesses under the enactments already set forth to determine whether any salvage at all is to be paid, and to assess its amount, a County Court having Admiralty jurisdiction also has jurisdiction to make an order as to the mode in which salvage which has been earned is to be distributed. The section creating such jurisdiction is as follows:—

(2.) Disputes as to distribution of salvage may be settled by County Court having Admiralty jurisdiction.

"Whenever the aggregate amount of salvage payable in respect of salvage services rendered in the United Kingdom

The Merchant Ship-

(*l*) *Beadnell v. Beeson*, L. R. 3 Q. B. 439.

(*m*) *The Stella*, 36 L. J. N. S. Adm. 13; L. R. 3 A. & E. 340.

(*n*) *Id.*

(*o*) *The William and John*, *supra*.

(*p*) *The Andrew Wilson*, 1 Mar. Law Cas. 377.

(*q*) See *ante*, p. 752.

(*r*) *The Empress*, L. R. 3 Ad. & Eccl. 502; *The Herman Wedel*, 3 Mar. Law Reps. 530; S. C. 39 L. J. N. S. Adm. 30.

(*s*) *The William and John*, 32 L. J. N. S. Adm. 102; *The Andrew Wilson*, Br. & C. 66; *The Kate*, 10 Jur. N. S. 444.

(*ss*) See *The Jeune Paul*, L. R. 1 A. & E. 336.

*ping Act,*  
1854, s. 498.

“ has been finally ascertained, and exceeds two hundred pounds,  
“ and whenever the aggregate amount of salvage payable in  
“ respect of salvage services rendered elsewhere has been finally  
“ ascertained, whatever such amount may be, then if any delay  
“ or dispute arises as to the apportionment thereof, any Court  
“ having Admiralty jurisdiction may cause the same to be  
“ apportioned amongst the persons entitled thereto in such  
“ manner as it thinks just ; and may for that purpose, if it  
“ thinks fit, appoint any person to carry such apportionment  
“ into effect, and may compel any person in whose hands or  
“ under whose control such amount may be to distribute the  
“ same, or to bring the same into Court, to be there dealt with  
“ as the Court may direct, and may for the purposes aforesaid  
“ issue such monitions or other processes as it thinks fit.”—  
17 & 18 Vict. c. 104, s. 498.

It is to be noticed that when this section came into operation, the County Courts did not possess any jurisdiction in admiralty, and, consequently, could not, under the above section, entertain disputes as to the distribution of salvage. But, as already stated, jurisdiction in regard to “any claim for salvage” has been conferred upon certain specified County Courts by section 3 of “The County Courts Admiralty Jurisdiction Act, 1868.” And it has been decided that, by the joint operation of this last-named section, and of section 498 of “The Merchant Shipping Act, 1854,” the County Courts specially appointed to have Admiralty jurisdiction may now entertain suits for distribution of salvage where the amount which the Court is asked to apportion does not exceed £300, notwithstanding that the value of the property saved exceeds £1,000, and though there has been no original suit for salvage but the sum claimed has been ascertained to be due without



other salvors should be served with the summons on the plaint or the petition (as the case may be).

As regards the district in which the proceedings must be taken, the following remarks arise.

In cases to recover disputed salvage under section 460 of "The Merchant Shipping Act, 1854," that section, it will be noted, in terms directs that, in the case of the exercise of the jurisdiction by two justices, they shall be, "in case of wreck, "resident at or near the place where such wreck is found: In "case of services rendered to any ship or boat, or to the "persons, cargo, or apparel belonging thereto, resident at or "near the place where such ship or boat is lying, or at or near "the first port or place in the United Kingdom into which "such ship or boat is brought after the occurrence of the "accident by reason whereof the claim to salvage arises."

"The Merchant Shipping Act Amendment Act, 1862," by which the jurisdiction is extended to County Courts, adds no further directions as to the district in which such jurisdiction is to be exercised. Where the Judge of the County Court to which it is wished to apply has his residence within or near to his district, no difficulty can arise in the application of the provisions just cited of "The Merchant Shipping Act, 1854." But if the Judge of the County Court be not resident in or near to his district, it is apprehended that the expression—"resident" at or near the places named—might, in the case of magistrates, possibly be held, as regards a County Court, to be equivalent to "being the Judge of a County Court district at or near the places named." At the same time, it would be prudent to avoid doing anything to cause this question to arise.

In cases as to the *distribution* of salvage, section 498 of "The Merchant Shipping Act, 1854," does not contain any express directions as to the district in which the proceedings are to be taken. Inasmuch, however, as the County Courts exercise this jurisdiction by the combined operation of the section just cited and section 8 of "The County Courts Admiralty Jurisdiction Act, 1868 (x), it is apprehended that the rules as to the selection of the County Court district which apply to ordinary Admiralty actions, and which have already been set out (y), govern proceedings for the adjustment of salvage under section 498 of "The Merchant Shipping Act, 1868."

The sections of "The Merchant Shipping Act, 1854," and of "The Merchant Shipping Act Amendment Act, 1862," under which the County Court Judges exercise jurisdiction in proceedings for the recovery and adjustment of disputed salvage do not contain any directions as to the mode in which proceedings under such jurisdiction are to be commenced. And sec-

In what district salvage proceedings must be taken.

—In cases of disputed claims for salvage.

—In cases as to the distribution of salvage.

Mode of commencing proceedings.

(x) *The Glannibanta, supra.*

(y) See *ante*, p. 766, *et seq.*

tion 498 of "The Merchant Shipping Act, 1854," under which the County Courts now exercise jurisdiction to *distribute* salvage, is equally silent as to the mode in which proceedings under that section are to be commenced. The concluding rule of "The County Court Rules, 1875," provide, however, as follows :—

Proceedings  
may be by  
plaint or  
petition.

Order XL.

"Where, by any Act not before mentioned in the foregoing rules, proceedings are directed to be taken in a County Court, such proceedings shall be commenced by plaint or petition ; and the foregoing rules shall apply to such proceedings so far as such rules are respectively applicable."—County Court Rules, 1875, Order XL.

Proceedings  
in *disputed*  
*claims to*  
salvage  
conveniently  
commenced  
by action.

Under a previous rule (2), which corresponded with that above set out, and which was identical with it in all respects, save that the old rule contained a specific reference to those sections of "The Merchant Shipping Act, 1854," which relate to recovery of disputed salvage, it was held that proceedings commenced by plaint and summons were regular (*a*). And in that case Lord Blackburn (then Mr. Justice Blackburn) observed, that he had "no doubt that the proceedings are quite sufficient in form ; indeed, Mr. Smith (*aa*) failed to show a better or more unobjectionable mode of proceeding." The practitioner who, in claims under "The Merchant Shipping Act," for disputed salvage proceeds by way of plaint and summons, has, therefore, high authority in support of the regularity of his proceedings.

Forms.

No forms of summons and particulars are provided by statute or by the rules and orders. The forms used in the case just cited, and there approved by Lord Blackburn, are, therefore, set out in the foot-note below (*b*).

It will be seen on reference to the Table of Fees in the Appendix (*bb*), that on entering the plaint (or filing the petition) the usual poundage of 1*s.* in the pound must be paid. Such fee (since the amount in dispute is measured by the amount claimed) is calculated on the claim made. Fees.

Under Order XL. of "The County Court Rules, 1875" (above set out), proceedings for the distribution of salvage under section 498 of "The Merchant Shipping Act, 1854," may be commenced either by action in the ordinary way (*i.e.*, by plaint and summons) or by petition. In a case which has been already referred to (*c*), in which proceedings under the section in question were taken by way of petition and summons, such proceedings were held by Sir Robert Phillimore, sitting in the Probate Admiralty and Divorce Division of the High Court, to be sufficient to found the jurisdiction of the County Court, so as to oblige the County Court Judge to hear and determine the case. The practitioner, therefore, who proceeds by way of petition has a precedent as authority for what he does. And it is believed that in cases relative to the distribution of salvage, it will be found that to proceed by petition is the most convenient course. Proceedings as to the distribution of salvage conveniently commenced by petition.

The forms of petition and summons used in the case just cited (*d*) are for convenience, and as no forms are elsewhere provided, set out in the foot-note below (*e*). Forms.

The fees payable on (as the case may be) filing the petition, Fees.

"or near Holy Island, and taking the said schooner and her cargo into a place of safety, the whole value of the said schooner and her cargo, tackle, apparel, and furniture, not exceeding the sum of £1000.

"Dated this day of

18  
"(Signed) A. B., Plaintiff's Solicitor."

(*bb*) Appendix I.

(*c*) *The Glannibanta*, L. R. 2 Prob. Div. 45.

(*d*) *The Glannibanta*, *supra*.

(*e*) The Form of Petition is as follows:—

"In the County Court of Durham, holden at Sunderland.

*Petition.*

"1. The plaintiff, William Elmore, licensed pilot of the port of Sunderland, and the plaintiff, Thomas Donkin, is a waterman, and was a master of a steam-tug, of the same port.

"2. The plaintiffs, on the 19th day of December, 1875, between the hours of one and two p.m., observed the screw steamer *Glannibanta*, of the port of Newcastle, of 534 tons register, making towards Sunderland Harbour. The state of the tide was then about four hours ebb, a sea of from three to four feet was rolling over the bar, and it was blowing a stiff breeze. The plaintiffs watched the progress of the steamer as she approached the harbour, knowing that any attempt on its part to take the harbour at that time of the tide, and with such sea, was fraught with great danger. When the steamer reached the bar, she struck, and ultimately went behind the North Pier."

[The succeeding paragraphs of the Petition proceed with the statement of the facts in the same way as they are set out in Par. 2, which is set out above only by way of precedent. The facts having been stated, the petition concludes with the following paragraphs, which, like Par. 2, are here set out by way of precedent only, and as a guide in other cases.] And with a prayer in conclusion:—

"10. The owners of *The Glannibanta* have paid to the defendants the sum of £250 for the services so rendered by *The Scottish Maid*, out of which sum they have paid the plaintiffs the sum of £7 13*s.* 4*d.* each.

"11. The plaintiffs considering the sum of £7 13*s.* 4*d.* wholly insufficient, have applied to the said defendants, the owners of the steam-tug *Scottish Maid*,

or entering the plaint, are the same as those which are, under the scale contained in the Appendix (æ), payable on other proceedings under "The Merchant Shipping Acts," namely, 1s. in the pound upon the amount claimed.

**Hearing.**

The proceedings (whether they be to recover disputed salvage or to distribute salvage already recovered) having been duly originated, either by petition and summons or by plaint and summons, in due time come on for hearing. In ordinary course, and in the absence of any proceedings to obtain another tribunal, the case will be heard before the County Court Judge sitting alone.

**Jury cannot  
be sum-  
moned.**

There is no power conferred by any of the sections of "The Merchant Shipping Act" to summon a jury either in cases where it is sought to recover salvage, the payment of which is disputed, or merely to distribute salvage recovered. Indeed, a jury in such cases would appear very much out of place. And it is submitted that Order XL. of "The County Court Rules, 1876," which is set out above, although it in general terms directs that the ordinary County Court rules shall, so far as they are applicable, extend to cases not otherwise provided for, does not authorise the summoning of a jury in such cases.

**In cases of  
disputes as  
to salvage,  
assessors  
may be sum-  
moned.**

There is, however, power in cases where proceedings are taken under section 460 of "The Merchant Shipping Act, 1854," to recover disputed claims to salvage, to summon assessors to try the claim. The power, it would appear, does not extend to proceedings to *distribute* salvage taken under section 498 of "The Merchant Shipping Act, 1854." As regards proceedings under section 460 of the Act, the power is conferred by a section of "The Merchant Shipping Act, 1854" (Part VIII.), which enacts as follows :—

“Whenever, in pursuance of this Act, any dispute as to salvage is referred to the arbitration of two justices, they may either themselves determine the same, with power to call to their assistance any person conversant with maritime affairs as assessor, or they may, if a difference of opinion arises between them, or without such difference if they think fit, appoint some person conversant with maritime affairs as umpire to decide the point in dispute; and such justices or their umpire shall make an award as to the amount of salvage payable, within the following times, that is to say, the said justices within forty-eight hours after such dispute has been referred to them, and the said umpire within forty-eight hours after his appointment, with power nevertheless for such justice or umpire, by writing under their or his hands or hand, to extend the time within which they and he are hereby respectively directed to make their or his award.”—17 & 18 Vict. c. 104, s. 461.

*Merchant Shipping Act, 1854,*  
s. 461.

The above provision does not in terms apply to the County Court. But it will be remembered that, on a previous page (f), we have pointed out that by “The Merchant Shipping Act Amendment Act, 1862,” a County Court Judge is empowered to exercise the same jurisdiction in salvage cases as is given to justices by Part VIII. of “The Merchant Shipping Act, 1854.” Consequently, the section as to assessors above cited applies now equally to salvage cases heard in the County Court in pursuance of the last-named Act. It is to be noticed that this section applies only to *salvage* cases; that only one assessor can be appointed; that such appointment must, it would appear, be made always at the suggestion of the Judge, and not at the instance of the parties; and that so much of the section as relates to the appointment of an umpire would appear to be inapplicable to a hearing by the County Court Judge.

Construction of the above enactment.

The remuneration of assessors called in under the foregoing powers is provided for as follows :—

“There shall be paid to every assessor and umpire who may be so appointed as aforesaid in respect of his services such sum not exceeding five pounds, as the Board of Trade may from time to time direct; and all the costs of such arbitration, including any such payments as aforesaid, shall be paid by the parties to the dispute, in such manner and in such shares and proportions as the said justices or as the said umpire may direct by their or his award.”—17 & 18 Vict. c. 104, s. 462.

Remuneration of assessors.  
*Merchant Shipping Act, 1854,*  
s. 462.

At the trial the County Court Judge, by virtue of “The Merchant Shipping Act Amendment Act, 1862,” possesses the same jurisdiction as justices possess; a power to call for documents, examine witnesses, and administer oaths is conferred upon the justices, and therefore now applies to County Courts also. On this subject “The Merchant Shipping Act, 1854,” provides as follows :—

Power to administer oaths and call for documents.

*Merchant  
Shipping  
Act, 1854,  
s. 463.*

"The said justices or their umpire may call for the production of any documents in the possession or power of either party, which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose."—17 & 18 Vict. c. 104, s. 463.

*Costs.*

It will be noted that in proceedings as to disputed claims for salvage, section 462 of "The Merchant Shipping Act, 1854" (*g*), expressly directs that all the costs of the arbitration including the fees (including the fees to the assessors, if any), "shall be paid by the parties to the dispute, in such manner and in such shares and proportions as [the County Court Judge] may direct." No express power as to costs is conferred by section 498 of the Act in cases as to the distribution of salvage, but it is apprehended that the power to direct how much each claimant is to receive incidentally implies power to order a deduction to be made out of the fund for costs.

*Form of  
judgment.*

No form of judgment or award (whichever it may be called) is either provided by statute or by the Rules and Orders, or is to be found in the Reports. The forms in the foot-note may be suggested (*h*).

(*g*) *Ante*, p. 807.

(*h*) The following Forms of Judgment will probably suffice. They are formed partly from the general headings and conclusions provided by the Rules and Orders, and partly upon the Form of Award of Salvage in cases under the Merchant Shipping Acts contained in that most useful work "Oke's Magisterial Formulist:—"

In a case of *disputed* salvage the judgment may be as follows:—

"In the County Court of . . . , holden at . . . " No. of Plaintiff . . .  
Between A. B. . . . Plaintiff,  
and . . .  
C. D. . . . Defendant.  
The . . . day of . . . , 187 . . .

The decision of the County Court Judge in cases under section 460 of "The Merchant Shipping Act, 1854," as to *disputed claims* to salvage is subject to appeal. There exists, however, no enactment by the terms of which an appeal is given in proceedings for the *distribution* of salvage taken under section 498. The right of appeal in cases of disputed salvage claims under section 460 is, so far as proceedings under this section are concerned (the section as just pointed out does not extend to any other proceedings) conferred by the following sections :—

"If any person is aggrieved by the award made by such justices or such umpire as aforesaid, he may in England appeal to the High Court of Admiralty of England, in Ireland to the High Court of Admiralty of Ireland, and in Scotland to the Court of Session ; but no such appeal shall be allowed unless the sum in dispute exceeds fifty pounds, nor unless within ten days after the date of the award the appellant gives notice to the justices to whom the matter was referred of his intention to appeal, nor unless the appellant proceeds to take out a monition, or to take such other proceeding as according to the practice of the Court of Appeal is necessary for the institution of an appeal, within twenty days from the date of the award."—17 & 18 Vict. c. 104, s. 464.

Appeal.

*Merchant Shipping Act, 1854,*  
s. 464.

"Whenever any appeal is made in manner hereinbefore provided, the justices shall transmit to the proper officer of the Court of Appeal a copy on unstamped paper certified under their hands to be a true copy of the proceedings had before such justices or their umpire, if any, and of the award so made by them or him, accompanied with their or his certificate in writing of the gross value of the article respecting which salvage is claimed ; and such copy and certificate shall be admitted in the Court of Appeal as evidence in the cause."—17 & 18 Vict. c. 104, s. 465.

*Merchant Shipping Act, 1854,*  
s. 465.

As to the mode of conducting an appeal to the High Court of Admiralty in salvage cases, and for the details of the practice, general reference must be made to the chapter dealing with the subject of appeals from County Courts in Admiralty (i).

Practice on appeal.

Orders as to salvage made under the enactment which we have been considering may, it would appear—since Order XI. of "The County Court Rules, 1875," above set out (k), makes the ordinary practice generally applicable—be enforced in case of need in the same way as other judgments of a County Court. And for the practice as to this, again, reference must be made to the chapter of this work which contains the practice as to the enforcement of judgments in ordinary actions (l).

Enforcement of orders as to salvage.

(i) See *ante*, p. 541 *et seq.*

(k) *Post*, p. 887.

(l) Book II. cap. xix. p. 586 *et seq.*

Special powers as to enforcement of judgments contained in the Merchant Shipping Act.

*Merchant Shipping Act, 1854,*  
s. 466.

Apportionment of salvage.

*Ibid.,*  
s. 467.

In addition, however, to any powers for the enforcement of judgments which may otherwise exist, "The Merchant Shipping Act, 1854," contains certain special provisions as to the enforcement of orders as to salvage made under the provisions of that Act. These it is necessary to set out in this place. And they are as follow :—

"Whenever the aggregate amount of salvage payable in respect of salvage services rendered in the United Kingdom has been finally ascertained either by agreement or by the award of such justices or their umpire, but a dispute arises as to the apportionment thereof amongst several claimants, then, if the amount does not exceed two hundred pounds, it shall be lawful for the party liable to pay the amount so due to apply to the receiver of the district for liberty to pay the amount so ascertained to him ; and he shall, if he thinks fit, receive the same accordingly, and grant a certificate under his hand, stating the fact of such payment and the services in respect of which it is made ; and such certificate shall be a full discharge and indemnity to the person or persons to whom it is given, and to their ship, boats, cargo, apparel, and effects, against the claims of all persons whomsoever in respect of the services therein mentioned ; but if the amount exceeds two hundred pounds, it shall be apportioned in manner hereinafter mentioned."—17 & 18 Vict. c. 104, s. 466.

"Upon the receipt of any such amount as aforesaid, the receiver shall with all convenient speed proceed to distribute the same among the several persons entitled thereto, upon such evidence and in such shares and proportions as he thinks fit, with power to retain any monies that may appear to him to be payable to any absent parties ; but any distribution



“in pursuance of the provisions hereinafter  
“contained,

“He shall detain such wreck until payment is  
“made, or process has been issued in  
“manner aforesaid :

“But it shall be lawful for the receiver, if at any time previously to the issue of such process security is given to his satisfaction for the amount of salvage due, to release from his custody any ship, boat, cargo, apparel, or wreck so detained by him as aforesaid ; and in cases where the claim for salvage exceeds two hundred pounds, it shall be lawful in England for the High Court of Admiralty of England, in Ireland for the High Court of Admiralty of Ireland, and in Scotland for the Court of Session, to determine any question that may arise concerning the amount of the security to be given or the sufficiency of the sureties ; and in all cases where bond or other security is given to the receiver for an amount exceeding two hundred pounds it shall be lawful for the salvor or for the owner of the property salvaged, or their respective agents, to institute proceedings in such last-mentioned Courts for the purpose of having the questions arising between them adjudicated upon, and the said Courts may enforce payment of the said bond or other security, in the same manner as if bail had been given in the said Courts.”—  
17 & 18 Vict. c. 104, s. 468.

“Whenever any ship, boat, cargo, apparel, or wreck is detained by any receiver for non-payment of any sums so due as aforesaid, and the parties liable to pay the same are aware of such detention, then, in the following cases (that is to say,)

Power of receiver to sell property salvaged in cases of non-payment.

*Ibid.*,  
s. 469.

“(1.) In cases where the amount is not disputed, and  
“payment thereof is not made within twenty  
“days after the same has become due :

“(2.) In cases where the amount is disputed, but no  
“appeal lies from the first tribunal to which the  
“dispute is referred, and payment thereof is not  
“made within twenty days after the decision of  
“such first tribunal :

“(3.) In cases where the amount is disputed, and an  
“appeal lies from the decision of the first tribunal to some other tribunal, and payment thereof is not made within such twenty days as last aforesaid, or such monition as hereinbefore mentioned is not taken out within such twenty days, or such other proceedings as are according to the practice of such other tribunal necessary for the prosecution of an appeal are not instituted within such twenty days :

- The receiver may forthwith sell such ship, boat, cargo, apparel or wreck, or a sufficient part thereof, and out of the proceeds of the sale, after payment of all expenses thereof, defray all sums of money due in respect of expenses, fees, and salvage, paying the surplus, if any, to the owners of the property sold, or other the parties entitled to receive the same."—17 & 18 Vict. c. 104, s. 469.

Subject to payment of expenses, fees, and salvage, owner entitled to wreck.

- Subject to the payment of such expenses, fees, and salvage as aforesaid, the owner of any wreck who establishes his claim thereto to the satisfaction of the receiver within one year from the date at which such wreck has come into the possession of the receiver, shall be entitled to have the same delivered up to him."—17 & 18 Vict. c. 104, s. 470.

## BOOK IV.

### JURISDICTION AND PROCEEDINGS IN ADMIRALTY AND PROBATE MATTERS.

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#### CHAPTER VIII.

##### JURISDICTION OF COUNTY COURTS IN ADMIRALTY AS TO DANGEROUS CARGOES.

“THE Merchant Shipping Act, 1873” (a), which forms one of a group of statutes (often called *the Plimsoll Acts*), which were passed mainly with a view to the protection of life at sea, prohibits any person, except the master or owner of the vessel, from sending or attempting to send by, or from carrying or attempting to carry in any vessel, *British* or *Foreign*, any dangerous goods.

It will be convenient to consider (I.) the *jurisdiction* of the County Courts under “The Merchant Shipping Acts” as to dangerous cargoes ; and (II.) the *practice* in proceedings under “The Merchant Shipping Acts” as to dangerous cargoes.

##### SECTION I.—THE JURISDICTION OF THE COUNTY COURTS UNDER “THE MERCHANT SHIPPING ACT, 1873,” AS TO DANGEROUS CARGOES.

“The Merchant Shipping Act, 1873,” provides as follows :—  
“If any person sends or attempts to send by, or not being the master or owner of the vessel carries or attempts to carry in any vessel, British or foreign, any dangerous goods ; (that is to say,) aquafortis, vitriol, naphtha, benzine, gunpowder, lucifer matches, nitro-glycerine, petroleum, or any other goods of a dangerous nature, without distinctly marking their nature on the outside of the package containing the same, and giving written notice of the nature of such goods and of the name and address of the sender or carrier thereof to the master or owner of the vessel at or before the time of sending the same to be shipped or taking the same on board the vessel, he shall for every such offence incur a penalty not exceeding one hundred pounds : Provided that if such per-

Conditions as to shipment of dangerous cargoes.

*The Merchant Shipping Act, 1873, s. 23.*

(a) 36 & 37 Vict. c. 85, s. 23, *infra*.

"son show that he was merely an agent in the shipment of any such goods as aforesaid, and was not aware and did not suspect and had no reason to suspect that the goods shipped by him were of a dangerous nature, the penalty which he incurs shall not exceed ten pounds."—36 & 37 Vict. c. 85, s. 23.

The above section, it is to be noticed, provides that *dangerous* goods shall only be carried on certain specified conditions. The conditions are, briefly, as follows :—(1.) The nature of the dangerous goods must be distinctly marked outside the package containing the same. (2.) Written notice must be given of the nature of the goods, and of the name and address of the sender or carrier thereof, to the master or owner of the vessel at or before the time of sending the same to be shipped or taking the same on board the vessel.—Neglect of these conditions renders the shipper of such goods, or his agent, if he has notice of their dangerous character, liable for every such offence to a penalty not exceeding £100.

When dangerous goods may be declared forfeited.

Where the conditions, as to the shipment of dangerous goods, indicated by section 23 of "The Merchant Shipping Act, 1873" (b), have not been fulfilled, and where any such goods have been sent or carried, or attempted to be sent or carried, under a false description, or the sender or carrier thereof has been falsely described, it shall be lawful for "*any Court having Admiralty jurisdiction*" to declare such goods, and any package or receptacle in which they are contained, to be forfeited, and when forfeited, they shall be disposed of as the Court directs (c). This jurisdiction may be exercised, though the owner has not committed any offence, under the provisions of this Act as to dangerous goods, and be not before the Court, and have not notice of the proceedings, and notwithstanding that there is no

"of forfeiture and disposal notwithstanding that the owner of the goods have not committed any offence under the provisions of this Act relating to dangerous goods, and be not before the Court, and have not notice of the proceedings, and notwithstanding that there be no evidence to show to whom the goods belong; nevertheless the Court may, in its discretion, require such notice as it may direct to be given to the owner or shipper of the goods before the same are forfeited."—36 & 37 Vict. c. 85, s. 27.

It is to be noticed that it is not quite free from doubt whether the power to declare dangerous goods to be forfeited, conferred by the above section, can be exercised where, though the conditions as to the shipment of such goods, prescribed by section 23 of the Act, have *not* been fulfilled, there has been no *false description* of the goods or of their owner or carrier. This depends upon whether the word "*and*," which occurs in the first paragraph of the above section, immediately after the words "*without such notice having been given as aforesaid*," is *conjunctive* or *disjunctive*. It is submitted, however, that it is *disjunctive*, and that, therefore, a declaration of forfeiture may be made, though there has been no false description of the goods or of their owner or carrier.

In what cases forfeiture arises.

It is also to be observed that the jurisdiction indicated by the above section is conferred upon "*any Court having Admiralty jurisdiction*." It therefore may clearly be exercised by such of the County Courts as are constituted by Orders in Council as Admiralty Courts, and *possibly* by *all* County Courts, as it would seem that *all* County Courts do possess *some* Admiralty jurisdiction (e).

In what Courts jurisdiction vested.

## SECTION II.—THE PRACTICE IN PROCEEDINGS UNDER "THE MERCHANT SHIPPING ACT, 1873," AS TO DANGEROUS CARGOES.

It may be as well to state generally, that, "The Merchant Shipping Act, 1873," is not expressly referred to in "The County Court Rules, 1875." Consequently, by virtue of Order XL. (f), such last-mentioned rules ("The County Court Rules, 1875,") apply to proceedings under the Act in question, so far as such rules are respectively applicable.

"The County Court Rules, 1875," apply to proceedings under the Act so far as applicable.

It is presumed that any person may proceed under section 27 of the Act, with a view to having dangerous goods declared forfeited. The owner of the goods need not be before the Court, or have notice of the proceedings (g).

Parties.

"The Merchant Shipping Act, 1873," provides that, though it is not *essential* that the owner of the goods have notice of

Notice before proceedings.

(e) *Supra*.

(f) Set out *post*, p. 887.

(g) 37 & 38 Vict. c. 85, s. 27, *supra*.

Within what  
district pro-  
ceedings to  
be taken.

Commence-  
ment of pro-  
ceedings.

Hearing.

the proceedings to have them declared forfeited, "*the Court may, in its discretion, require such notice as it may direct, to be given to the owner or shipper of the goods before the same are forfeited*" (h).

Though the Act is silent on the subject, it is presumed that the proceedings under section 27 should be taken in the County Court of the district where the things prohibited by that section are done.

Proceedings in the County Court, under section 27 of the Act, may be commenced by plaint or petition (i).

As already seen (k), the Court may exercise the jurisdiction conferred upon it by section 27, in the absence of the owner, and though no notice has been given to him (l). It may, however, direct notice to be given; and, where this course is followed, the hearing would of course be adjourned in consequence.

The Court may adjudicate upon the case, though there is no evidence to show to whom the goods belong (m).

It is to be noticed that the Court may declare the goods themselves to be forfeited, and also *any package or receptacle in which they are contained* (n). Moreover, when the declaration of forfeiture has been made by the Court, the things so declared to be forfeited, "*shall thereupon be forfeited, and when forfeited, shall be disposed of as the Court directs*" (o).

(h) 36 & 37 Vict. c. 85, s. 27, *ante*, pp. 814, 815.

(i) "The County Court Rules, 1875," Ord. xl.

(k) *Ante*, p. 815.

(l) 36 & 37 Vict. c. 85, s. 27, *ante*, pp. 814, 815.

(m) *Ib.*

(n) 36 & 37 Vict. c. 85, s. 27, *ante*, pp. 814, 815.

(o) *Ib.*

## BOOK IV.

### JURISDICTION AND PROCEEDINGS IN ADMIRALTY AND PROBATE MATTERS.

#### CHAPTER IX.

##### THE JURISDICTION AND PRACTICE OF THE COUNTY COURTS AS COURTS OF SURVEY.

It has been stated in the previous Chapter (*a*), that, by a series of statutes, commonly called "The Plimsoll Acts," the greater security of life at sea has been, as far as possible, promoted. The first of these statutes was passed in 1871, and was called "The Merchant Shipping Act, 1871." The last of such Acts—and that which contains the most important of the provisions now in force on this subject—was passed in 1876, and is called "The Merchant Shipping Act, 1876."

The provisions for the preservation of life and property at sea, contained in "The Merchant Shipping Acts," deal with the subject from two separate and distinct points of view.

In the first place, stringent provision is now made to secure the detention of ships—whether British or foreign—which are unseaworthy. The enactments now in force on this subject, are contained in "The Merchant Shipping Act, 1876" (*b*), and may be summed up as follows:—An unseaworthy ship—whether British (*c*) or foreign (*d*)—may be detained first, provisionally, and, if need be, afterwards finally, by order of the Board of Trade. But an appeal may, in either case, be made to a "Court of Survey," against any such order of detention.

In the next place, "The Merchant Shipping Act, 1854," requires that all passenger steamers obtain certain certificates. In case such certificates be refused, it is now provided by "The Merchant Shipping Act, 1876" (*e*), that an appeal against such refusal may be made to a Court of Survey (*f*).

Provision is made by "The Merchant Shipping Act, 1876" (*g*), for the establishment of "Courts of Survey," to hear and decide the appeals thus given by the Act, either against orders for the detention of ships, or against the refusal of her certificates to a passenger steamer. The enactment

Acts deal  
with two  
matters.

(1.) Detention  
of unseaworthy  
ships.

(2.) Passen-  
ger steamers  
may appeal  
against a  
refusal of  
their certificate  
as such.

Establish-  
ment of  
Courts of  
Survey.

(*a*) *Ante*, p. 813.

(*d*) Sect. 13.

(*b*) 39 & 40 Vict. c. 80.

(*e*) 39 & 40 Vict. c. 80.

(*g*) 39 & 40 Vict. c. 80.

(*c*) Sect. 6.

(*f*) Sect. 14.

constituting these Courts, will be set out presently, and it provides that the Judges of the various Courts of Survey shall be appointed by rules to be made under the Act. In pursuance of this section, certain rules called "The Rules of the Court of Survey, 1876," have been made, which will be more fully referred to presently.

Division of  
the subject.

With these preliminary remarks by way of explanation, it will be convenient to consider—(I.) The constitution and officers of the County Courts as Courts of Survey. (II.) The jurisdiction of County Courts as Courts of Survey. (III.) The practice of County Courts as Courts of Survey.

#### SECTION I.—CONSTITUTION, OFFICERS AND GENERAL POWERS OF COUNTY COURTS AS COURTS OF SURVEY.

Constitution  
of Courts of  
Survey.

*The Mer-  
chant Ship-  
ping Act,  
1876, s. 7.*

Judges.

"The Merchant Shipping Act, 1876," provides as follows :—

"A Court of Survey for a port or a district shall consist of  
"a Judge sitting with two assessors.

"The Judge shall be such person as may be summoned for  
"the case in accordance with the rules made under this Act  
"out of a list (from time to time approved for the port or dis-  
"trict by one of Her Majesty's Principal Secretaries of State,  
"in this Act referred to as a Secretary of State,) of wreck  
"commissioners appointed under this Act, stipendiary or  
"metropolitan police magistrates, Judges of County Courts,  
"and other fit persons ; but in any special case in which the  
"Board of Trade think it expedient to appoint a wreck com-  
"missioner, the Judge shall be such wreck commissioner.

Assessors.

"The assessors shall be persons of nautical engineering or  
"other special skill and experience ; one of them shall be  
"appointed by the Board of Trade, either generally or in each



"The name of the Registrar and his office, together with the rules made under this Act relating to the Court of Survey, shall be published in the prescribed manner."—39 & 40 Vict. c. 80, s. 7. Officers.

It is to be noticed that the above section provides that the Judge of a Court of Survey shall be such person as may be summoned for the case out of a list (approved for the port or district by a Secretary of State) of various persons, and including Judges of County Courts; and that the County Court Registrar, or such other fit person as a Secretary of State may from time to time appoint, shall be the Registrar of the Court. Accordingly, in pursuance of this enactment, and of sections 7 and 9 of the Act, such a list has been framed, and is to be found in the Appendix A. of "The Rules of the Court of Survey, 1876."

"The Rules of the Court of Survey, 1876," provide as follows:—

"The Courts of Survey, with the districts assigned to each, and the persons authorised to act as Judges and Registrars thereof, and which have been approved by one of Her Majesty's Principal Secretaries of State, as set forth in Appendix A. (A), shall be the Courts of Survey, and the *The Rules of the Court of Survey, 1876, rule 4.*

(A) Appendix A. herein referred to, is as follows:—

#### APPENDIX A.

LISTS of the COURTS OF SURVEY, with the Districts assigned to each, and the Persons authorised to act as Judges and Registrars thereof, approved by one of Her Majesty's Principal Secretaries of State.

In the following Lists, Column No. 1 contains the names of all the Courts of Survey in the United Kingdom.

#### *Districts.*

The district of the Court of Survey for London shall include the City of London, and the districts of all the metropolitan County Courts, the districts of the County Court of Kent holden at Gravesend, Dartford, Greenwich, and Woolwich, the districts of the County Court of Essex holden at Brentwood and Romford, and the district of the County Court of Surrey holden at Wandsworth.

The district of any other Court of Survey in England shall be the district of the County Court of the place, at which the Court of Survey is held.

The district of a Court of Survey in Scotland and in Ireland shall be the district of the Port of Customs of the place, at which the Court is held.

The Courts shall be held at the places, whose names they bear, or at any place within their respective districts, and may, by the permission of the Judge, be adjourned to any place out of such districts.

#### *Judges.*

The Wreck Commissioner shall be a Judge of every Court of Survey in the United Kingdom.

The persons, whose official titles are set out in column No. 2, shall be the other Judges of the Courts of Survey at the places opposite to which their names occur (AA).

#### *Registrars.*

The Registrar of the Court of Survey for London shall be Mr. William Edward

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(AA) In the official copy of these rules the words "names occur" have been accidentally omitted.

"districts, Judges, and Registrars of such Courts, for the purposes of 'The Merchant Shipping Acts,' 1854 to 1876."—Rules of the Court of Survey, r. 4.

Remuneration  
of officers.

Provision for the remuneration of the officers of Courts of Survey is made by "The Merchant Shipping Act, 1876,"

Stanley Thomson, and his office shall be at Somerset House, Strand, in the county of Middlesex.

The Registrar of any other Court of Survey in England shall be the Registrar of the County Court of the place at which the Court of Survey is held, and his office shall be the office of the Registrar of the said County Court.

The Registrar of a Court of Survey in Scotland shall be the Sheriff Clerk of the county, in which the Court is held, and his office shall be the office of the said Sheriff Clerk.

The Registrar of a Court of Survey in Ireland shall be the Clerk of the Peace, or Registrar or other person discharging the duties of Registrar of the Court of the Chairman of the county, in which the Court is held, and his office shall be the office of the Clerk of the Peace, Registrar, or other person aforesaid.

#### LIST No. 1.

#### COURTS OF SURVEY IN ENGLAND.

##### Column No. 1.

##### Column No. 2.

Court of Survey for	Judges of the Courts of Survey at the places opposite to which their Names occur.
Berwick . . . . .	) The Judges of the County Courts in Circuits 1 and 2. The Recorder of Berwick.
Belford . . . . .	
Alnwick . . . . .	
Morpeth . . . . .	
North Shields . . . . .	) The Judges of the County Courts in Circuits 1 and 2. The Stipendiary Magistrate at South Shields. The Recorders of Durham and Newcastle. The Judges of the County Courts in Cir-
Newcastle . . . . .	
Gateshead . . . . .	
South Shields . . . . .	
Sunderland . . . . .	
Seaham Harbour . . . . .	

which contains a section on the subject of such remuneration, which is in terms as follows :—

“ On and after the first day of January one thousand eight

*The Merchant Shipping Act, 1876, s. 39.*

Column No. 1.	Column No. 2.
Court of Survey for	Judges of the Courts of Survey at the places opposite to which their Names occur.
Yarmouth . . . . .	{ The Judge of the County Courts in Circuits 32 & 33.
Lowestoft . . . . .	
Halesworth . . . . .	{ The Recorders of Oxford, Norwich, and Yarmouth.
Framlingham . . . . .	
Woodbridge . . . . .	{ The Judge of the County Courts in Circuit 33.
Ipswich . . . . .	
Harwich . . . . .	{ The Recorders of Aldborough and Oxford.
Colchester . . . . .	
Maldon . . . . .	{ The Judge of the County Courts in Circuits 33 and 38.
Rochford . . . . .	
London . . . . .	{ The Recorder of Ipswich.
Rochester . . . . .	
Sheerness . . . . .	{ The Judge of the County Courts in Circuit 38.
Sittingbourne . . . . .	
Faversham . . . . .	{ The Recorders of Colchester and Maldon.
Canterbury . . . . .	
Margate . . . . .	{ The Magistrates of the Metropolitan Police Courts.
Ramsgate . . . . .	
Sandwich . . . . .	{ The Judge of the County Courts in Circuit 48.
Deal . . . . .	
Dover . . . . .	{ The Stipendiary Magistrate at Sheerness.
Folkestone . . . . .	
Hythe . . . . .	{ The Recorders of Faversham and Rochester.
Romney . . . . .	
Rye . . . . .	{ The Judges of the County Courts in Circuits 48 and 49.
Hastings . . . . .	
Lewes . . . . .	{ The Judge of the Admiralty Court of the Cinque Ports.
Brighton . . . . .	
Worthing . . . . .	{ The Recorder of Rye.
Arundel . . . . .	
Chichester . . . . .	{ The Judges of the County Courts in Circuits 50 and 51.
Portsmouth . . . . .	
Southampton . . . . .	{ The Stipendiary Magistrate at Brighton.
Newport, Isle of Wight . . . . .	
Christchurch . . . . .	{ The Recorders of Brighton and Seaford.
Poole . . . . .	
Wareham . . . . .	{ The Judge of the County Courts in Circuits 50 and 51.
Weymouth . . . . .	
Bridport . . . . .	{ The Recorders of Chichester, Portsmouth, and Winchester.
Axminster . . . . .	
Honiton . . . . .	{ The Judge of the County Courts in Circuit 55.
Exeter . . . . .	
Newton Abbott . . . . .	{ The Judge of the County Courts in Circuits 57 and 58.
Totnes . . . . .	
Kingsbridge . . . . .	{ The Recorder of Exeter.
	{ The Judge of the County Courts in Circuit 58.
	{ The Recorder of Dartmouth.

*The Merchant Shipping Act, 1876, s. 39.*

"hundred and seventy-seven all fees payable in respect of the  
"survey or measurement of ships under 'The Merchant  
"Shipping Acts,' 1854 to 1876, or in respect of any services

Column No. 1.	Column No. 2.
Court of Survey for	Judges of the Courts of Survey at the places opposite to which their Names occur.
East Stonehouse . . . . .	The Judges of the County Courts in Circuits 58 & 59. The Recorders of Devonport, Plymouth, and Tiverton.
Liskeard . . . . .	
Saint Austell . . . . .	
Truro . . . . .	The Judge of the County Courts in Circuit 59. The Recorders of Falmouth, Helston, and Penzance.
Falmouth . . . . .	
Helston . . . . .	
Penzance . . . . .	The Judge of the County Courts in Circuit 57. The Recorders of Barnstaple and Bideford.
Redruth . . . . .	
Bodmin . . . . .	
Camelford . . . . .	The Judges of the County Courts in Circuits 64 and 67. The Recorders of Bristol and Wells.
Holsworthy . . . . .	
Bideford . . . . .	
Barnstaple . . . . .	The Judges of the County Courts in Circuits 53 and 54. The Recorders of Gloucester.
Williton . . . . .	
Bridgewater . . . . .	
Weston-super-Mare . . . . .	The Judges of the County Courts in Circuits 24 and 54. The Recorder of Gloucester.
Wells . . . . .	
Bristol . . . . .	
Thornbury . . . . .	The Judges of the County Courts in Circuits 24, 30, and 31. The Stipendiary Magistrates at Cardiff and Swansea.
Dursley . . . . .	
Gloucester . . . . .	
Newnham . . . . .	
Cleptow . . . . .	
Newport (Monmouth) . . . . .	
Cardiff . . . . .	
Bridgend . . . . .	
Neath . . . . .	
Swansea . . . . .	

“performed by any person employed under the authority of ‘The Passengers Act, 1855,’ shall continue to be paid to the superintendent of a mercantile marine office at such times and in such manner as the Board of Trade from time to time direct, but shall be paid into the receipt of Her Majesty’s Exchequer in such manner as the Treasury from time to time direct, and shall be carried to and form part of the Consolidated Fund of the United Kingdom.

*The Merchant Shipping Act, 1876, s. 39.*

“On and after the same day the salaries of all surveyors appointed under ‘The Merchant Shipping Acts,’ 1854 to 1876, and so much of the expenses connected with the survey and measurement of ships under those Acts, and of the salaries and expenses of persons employed under ‘The Passengers Act, 1855,’ as has heretofore been paid out of the Mercantile Marine Fund, shall be paid out of moneys provided by Parliament, and the Treasury shall have the like control over such salaries and expenses as has heretofore been vested in the Board of Trade.

“There may be paid out of moneys provided by Parliament, to any wreck commissioner, Judge of a Court of Survey, assessor, Registrar of a Court of Survey, detaining officer, scientific referee, and other officer or person appointed under this Act, such salary or remuneration (if any) as the Treasury from time to time direct.

“There may be paid out of moneys provided by Parliament all costs and compensation payable by the Board of Trade in pursuance of this Act.”—39 & 40 Vict. c. 80, s. 39.

“The Merchant Shipping Act, 1876,” provides for the framing of rules of procedure for carrying into effect the statutory provisions with respect to Courts of Survey. The section on this subject is as follows :

Provision as to framing of rules of procedure.

“The Lord Chancellor of Great Britain may from time to time (with the consent of the Treasury so far as relates to fees) make, and when made revoke, alter, and add to general rules to carry into effect the provisions of this Act with

Rules under Act may be framed, revoked, altered, and added to.

Column No. 1.	Column No. 2.
Court of Survey for	Judges of the Courts of Survey at the places opposite to which their Names occur.
Ormskirk . . . . .	{ The Judges of the County Courts in Circuit 6.
Preston . . . . .	
Kirkham . . . . .	
Paulton-le-Fylde . . . . .	
Lancaster . . . . .	{ The Judge of the County Courts in Circuit 4.
Ulverston . . . . .	
Whitehaven . . . . .	{ The Recorder of Preston.
Cockermouth . . . . .	
Wigton . . . . .	{ The Judge of the County Courts in Circuit 3.
Carlisle . . . . .	
	{ The Recorder of Carlisle.

*The Merchant Shipping Act, 1876, s. 9.*

“respect to a Court of Survey, and in particular with respect to the summoning of and procedure before the Court, the requiring on an appeal security for costs and damages, the amount and application of fees, and the publication of the rules.

“All such rules while in force shall have effect as if enacted in this Act, and the expression ‘prescribed’ in the provisions of this Act relating to the detention of ships or Court of Survey means prescribed by such rules.”—39 & 40 Vict. c. 80, s. 9.

In pursuance of this provision, “The Rules of the Court of Survey, 1876,” have been framed. They contain the following provisions as to certain matters incident to the Courts of Survey :—

Preamble to  
“The Rules  
of the Courts  
of Survey,  
1876.”

“Whereas, by ‘The Merchant Shipping Act, 1876,’ it is provided that the owner or master of a ship, that has been provisionally detained, may appeal to the Court of Survey for the port or district where the ship is detained :

“And whereas it is further provided that every Court of Survey shall consist of a Judge sitting with two assessors ; and that the Judge of the Court shall be summoned from a list of persons from time to time approved for the port or district by one of Her Majesty’s principal Secretaries of State :

“And whereas it is provided that the Lord Chancellor of Great Britain may from time to time (with the consent of the Treasury so far as relates to fees) make general rules to carry into effect the provisions of the said Act with respect to Courts of Survey :

“Now, therefore, I, the Right Honourable Hugh MacCallmont Baron Cairns, Lord High Chancellor of Great Britain, with the consent so far as may be necessary of one of Her

"A notice shall be put up in some conspicuous place in every Custom House and Mercantile Marine Office in the United Kingdom, containing the name of the registrar of the Court of Survey for that district, and the name of the street or place in which such registrar's office is situated."—Rules of the Courts of Survey, r. 6.

Publication of the name of Registrar and of his office.

*Rule 6.*

"In computing the number of days within which any act is to be done, the same shall be reckoned exclusive of the first day and inclusive of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, or Good Friday; or on a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusive of that day also."—Rules of the Courts of Survey, r. 34.

Computation of time.

*Rule 34.*

"The days between Thursday next before and the Wednesday next after Easter Day and Christmas Day, and the three following days, shall not be reckoned or included in the computation."—Rules of the Courts of Survey, r. 35.

Days excluded from computation.

*Rule 35.*

As regards the service of orders, notices, statements, or documents required to be served by any provision of the Act, "The Merchant Shipping Act, 1876," provides as follows:—

Service of orders, notices, &c., required to be served by "The Merchant Shipping Act, 1876."

"Where any order, notice, statement, or document requires, for the purpose of any provision of this Act, to be served on the master of a ship, the same shall be served, where there is no master, and the ship is in the United Kingdom, on the managing owner of the ship, or if there is no managing owner, on some agent of the owner residing in the United Kingdom, or where no such agent is known or can be found, by affixing a copy thereof to the mast of the ship.

*The Merchant Shipping Act, 1876, s. 35.*

"Any such order, notice, statement, or document may be served by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode, or in the case of a master by leaving it for him on board the ship with the person being or appearing to be in command or charge of such ship.

"Any person who obstructs the service of any order, notice, statement, or document on the master of a ship shall incur a penalty not exceeding ten pounds, and if the owner or master of the ship is party or privy to such obstruction he shall be guilty of a misdemeanor."—39 & 40 Vict. c. 80, s. 35.

In order, it is presumed, to facilitate the service of documents required to be served, it is provided by the following section that the name and address of the managing owner for the time being of any registered British ship, or if there be no such person, then of the ship's husband or other person to whom the management of the ship is entrusted, shall be registered at the custom house of the ship's port of registry:—

Name and address of managing owner of British ship, or of ship's husband, or other person acting for owner, to be registered.

"The name and address of the managing owner for the time being of every British ship registered at any port or place in

*The Mer-  
chant Ship-  
ping Act,  
1876, s. 36.*

“ the United Kingdom shall be registered at the custom house  
“ of the ship’s port of registry.

“ Where there is not a managing owner there shall be so re-  
“ gistered the name of the ship’s husband or other person to  
“ whom the management of the ship is entrusted by or on  
“ behalf of the owner ; and any person whose name is so regis-  
“ tered shall, for the purposes of ‘ The Merchant Shipping Acts,  
“ 1854 to 1876,’ be under the same obligations, and subject to  
“ the same liabilities, as if he were the managing owner.

“ If default is made in complying with this section the owner  
“ shall be liable, or if there be more owners than one, each  
“ owner shall be liable in proportion to his interest in the ship,  
“ to a penalty not exceeding in the whole one hundred pounds  
“ each time the ship leaves any port in the United Kingdom.”  
39 & 40 Vict. c. 80, s. 36.

“ The Rules of the Courts of Survey, 1876,” contain the  
following provisions as to service of process and proof of such  
service :—

*Rule 36.*

“ Any notice, summons, or other document issuing out of  
“ the Court may be served by post.”—Rules of the Courts of  
Survey, r. 36.

*Rule 37.*

“ The service of any notice, summons, or other document  
“ may be proved by the oath or affidavit of the person by whom  
“ it was served.”—Rules of the Courts of Survey, r. 37.

*Rule 38.*

“ The fees, a table whereof is in Appendix C. (i), shall be  
“ demanded and taken in any proceedings before a Court of  
“ Survey.”—Rules of the Courts of Survey, r. 38.

*Forms.*

With regard to the forms (k), several are found in Appendix  
B. to “ The Rules of the Court of Survey, 1876.” With re-



gard to these, a direction is contained in Appendix B. to the said rules, as follows :

“ The following forms shall be employed, as far as possible, with such alterations as circumstances may require, but no deviation from the prescribed forms shall invalidate the proceedings, unless the Judge shall be of opinion that the deviation was material.

Direction as to forms in Appendix B. to rules.

## SECTION II.—THE JURISDICTION OF THE COUNTY COURTS AS COURTS OF SURVEY.

In the introductory and explanatory remarks at the commencement of the present chapter it has been pointed out that there are two matters relating to the preservation of life and property at sea, for which provision is made by “ The Merchant Shipping Acts ; ” such two matters being, (1), The detention of unseaworthy ships ; and (2), Certificates to passenger steamers—and that a Court of Survey possesses an appellate jurisdiction with respect to each of these matters. It will be necessary to consider separately the jurisdiction possessed by Courts of Survey over each of these two matters.

First, as to the jurisdiction of Courts of Survey as to orders for the detention of unseaworthy ships. To appreciate this jurisdiction, it is necessary to set out the enactments conferring authority on the Board of Trade to detain unseaworthy ships before stating the rights of appeal which exist against such orders when made.

Power to detain a *British* ship which is unseaworthy is conferred upon the Board of Trade by the following section of “ The Merchant Shipping Act, 1876,” which is as follows :—

“ Where a British ship, being in any port of the United Kingdom, is, by reason of the defective condition of her hull, equipments, or machinery, or by reason of overloading or improper loading, unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended, any such ship (hereinafter referred to as ‘ unsafe ’) may be provisionally detained for the purpose of being surveyed, and either finally detained or released, as follows :

“ (1.) The Board of Trade, if they have reason to believe  
“ on complaint, or otherwise, that a British ship  
“ is unsafe, may provisionally order the detention  
“ of the ship for the purpose of being surveyed.

“ (2.) When a ship has been provisionally detained there  
“ shall be forthwith served on the master of the  
“ ship a written statement of the grounds of her  
“ detention, and the Board of Trade may, if they  
“ think fit, appoint some competent person or

Jurisdiction of Courts of Survey is  
(1.) Appeals against orders of detention, and (2.) Appeals against refusal of passenger steamers' certificates.

(1.) Jurisdiction as to detention of unseaworthy ships.

British ships may be detained if unseaworthy.

*The Merchant Shipping Act, 1876, s. 6.*

“ persons to survey the ship and report thereon  
“ to the Board.

“(3.) The Board of Trade on receiving the report may  
“ either order the ship to be released or, if in  
“ their opinion the ship is unsafe, may order her  
“ to be finally detained, either absolutely or until  
“ the performance of such conditions with respect  
“ to the execution of repairs or alterations, or the  
“ unloading or reloading of cargo, as the Board  
“ think necessary for the protection of human  
“ life, and may from time to time vary or add to  
“ any such order.

“(4.) Before the order for final detention is made a copy  
“ of the report shall be served upon the master  
“ of the ship, and within seven days after such  
“ service the owner or master of the ship may  
“ appeal in the prescribed manner to the Court  
“ of Survey (hereinafter mentioned) for the port  
“ or district where the ship is detained.

“(5.) Where a ship has been provisionally detained, the  
“ owner or master of the ship, at any time before  
“ the person appointed under this section to  
“ survey the ship makes such survey, may re-  
“ quire that he shall be accompanied by such  
“ person as the owner or master may select out  
“ of the list of assessors for the Court of Survey  
“ (nominated as hereinafter mentioned), and in  
“ such case if the surveyor and assessor agree,  
“ the Board of Trade shall cause the ship to be  
“ detained or released accordingly, but if they

“(9.). Any officer so appointed (in this Act referred to as “a detaining officer) shall have the same power “as the Board of Trade have under this section “of provisionally ordering the detention of a “ship for the purpose of being surveyed, and “of appointing a person or persons to survey “her; and if he thinks that a ship so detained “by him is not unsafe may order her to be “released.

“(10.) A detaining officer shall forthwith report to the “Board of Trade any order made by him for the “detention or release of a ship.”—39 & 40 Vict. c. 80, s. 6.

It is to be noticed that the above section applies only where the ship is a *British* ship, and is in any port of the United Kingdom. And the cause of her unfitness to proceed to sea must be one of those mentioned in the section, namely, “*by reason of the defective condition of her hull, equipments, or machinery, or by reason of overloading or improper loading.*” Moreover, as regards the *degree* of unfitness, the ship must be what is afterwards referred to as *unsafe*, i.e., “*unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended.*” When the state of a British ship, within any port of the United Kingdom, is believed to be unsafe, within the meaning of the enactment, and this condition is believed to be the result of any of the causes specified in the section, she may be provisionally detained by order of the Board of Trade. A written statement of the grounds of her detention is then served on the master of the ship, and the Board of Trade may then appoint some competent person to survey the ship, and report thereon to them. On receiving the said report, the Board may order the ship to be released or detained, either absolutely or conditionally, and may from time to time vary or add to such order. Before the order for final detention is made, a copy of the report is served upon the master of the ship, and, *within seven days after such service, the owner or master may appeal to the Court of Survey.* When, however, the ship has been surveyed, not merely by the surveyor of the Board of Trade, but also at the request of the owner or master of the ship, by one of the assessors for the Court of Survey, there is no appeal from the joint decision of these two persons unless they differ; in which case the owner and master have the like appeal, touching the report of the surveyor, as is before provided by this section. Not only has a Court of Survey, under this section, jurisdiction to entertain appeals by owners or masters of detained ships, but, where a ship has been provisionally detained, the Board of Trade may, at any time, if they think expedient, refer the matter to the Court of Survey.

Effect of this section.

But Board of Trade may require security by complainant before making order for detention.

*The Merchant Shipping Act, 1876, s. 11.*

Power to detain foreign ships.

*The Merchant Ship-*

It is, however, placed in the discretion of the Board of Trade—with the view, doubtless, of preventing frivolous and vexatious complaints—to require security before making an order for the detention of a British ship. The section conferring this power, is as follows :—

“Where a complaint is made to the Board of Trade or a detaining officer that a British ship is unsafe, the Board or officer may, if they or he think fit, require the complainant to give security to the satisfaction of the Board for the costs and compensation which he may become liable to pay as hereinafter mentioned.

“Provided that where the complaint is made by one-fourth, being not less than three, of the seamen belonging to the ship, and is not in the opinion of the Board or officer frivolous or vexatious, such security shall not be required, and the Board or officer shall, if the complaint is made in sufficient time before the sailing of the ship, take proper steps for ascertaining whether the ship ought to be detained under this Act.

“Where a ship is detained in consequence of any complaint, and the circumstances are such that the Board of Trade are liable under this Act to pay to the owner of the ship any costs or compensation, the complainant shall be liable to pay to the Board of Trade all such costs and compensation as the Board incur or are liable to pay in respect of the detention and survey of the ship.”—39 & 40 Vict. c. 80, s. 11.

Power, similarly, to detain a foreign vessel which is unseaworthy is, under certain circumstances, conferred by a section of “The Merchant Shipping Act, 1876,” which provides as follows :—

“Where a foreign ship has taken on board all or any part of her cargo at a port in the United Kingdom, and is whilst at

“differ, the Board of Trade may act as if the requisition had not been made, and the owner and master shall have the appeal to the Court of Survey touching the report of the surveyor which is before provided by this Act ; and

“(3.) Where the owner or master of the ship appeals to the Court of Survey, the consular officer, on the request of such owner or master, may appoint any competent person who shall be assessor in such case in lieu of the assessor who, if the ship were a British ship, would be appointed otherwise than by the Board of Trade.

“In this section the expression ‘consular officer’ means any consul-general, vice-consul, consular agent, or other officer recognised by a Secretary of State as a consular officer of a foreign State.”—39 & 40 Vict. c. 80, s. 13.

This section, it is to be noticed, provides that the provisions of this Act, with respect to the detention of ships, shall, in certain modifications, apply to a *foreign* ship when she has “*taken on board all or any part of her cargo at a port in the United Kingdom, and is, whilst at that port, unsafe, by reason of overloading or improperly loading.*” What is meant by a vessel being “*unsafe,*” is specified in section 6 of the Act (*l*). But, it is worthy of notice, that, in the case of a *foreign* ship, she can only be detained if the unsafeness is produced, by reason of *overloading or improperly loading*. Whereas, in the case of a *British* ship, as we have seen (*m*), the detention is permitted, though the unsafeness is produced by other causes.

Effect of this section.

When a foreign ship is detained, by virtue of this section, the order for the provisional detention, must be served upon the nearest *consular officer* for the State to which the ship belongs. This official may, at the request of the owner or master of the ship, require that the surveyor appointed by the Board of Trade shall be accompanied by such person as the consular officer may select. If these persons *agree* there is no appeal, and the Board of Trade directs the detention or release of the ship, as the case may be. But if they *differ*, the owner and master have the appeal to the Court of Survey, touching the report of the surveyor, which is before provided by this Act. In the event of an appeal, “*the consular officer, on the request of such owner or master, may appoint any competent person who shall be assessor in such case, in lieu of the assessor who, if the ship were a British ship, would be appointed otherwise than by the Board of Trade.*”

It will be noted that provision is made (by subsections 8 and 9 of section 6 of “The Merchant Shipping Act, 1876,”) for the appointment of proper detaining officers, by whom, when

By whom orders of detention are executed.

(*l*) *Ante*, pp. 827—829.

(*m*) *Ante*, p. 829.

an order for the detention of a ship (whether British or foreign) has been duly made, such order may be carried into execution. In addition to these provisions, it is also enacted that any of the persons named in the following sections of "The Merchant Shipping Act, 1876," may detain a ship where detention is ordered :—

39 & 40 Vict.  
c. 80, s. 34.

"Where under the Merchant Shipping Acts, 1854 to 1876, or any of them, a ship is authorised or ordered to be detained, any commissioned officer on full pay in the naval or military service of Her Majesty, or any officer of the Board of Trade or Customs, or any British consular officer may detain the ship, and if the ship after such detention or after service on the master of any notice of or order for such detention proceeds to sea before it is released by competent authority, the master of the ship, and also the owner, and any person who sends the ship to sea, if such owner or person be party or privy to the offence, shall forfeit and pay to Her Majesty a penalty not exceeding one hundred pounds.

"Where a ship so proceeding to sea takes to sea when on board thereof in the execution of his duty any officer authorised to detain the ship, or any surveyor or officer of the Board of Trade or Customs, the owner and master of the ship shall each be liable to pay all expenses of and incidental to the officer or surveyor being so taken to sea, and also a penalty not exceeding one hundred pounds, or, if the offence is not prosecuted in a summary manner, not exceeding ten pounds for every day until the officer or surveyor returns, or until such time as would enable him after leaving the ship to return to the port from which he is taken, and such expenses may be recovered in like manner as the penalty."

39 & 40 Vict. c. 80, s. 34.

“machinery, equipments, and cargo, and may  
“require the unloading or removal of any cargo,  
“ballast, or tackle.

“(5.) The provisions of ‘The Merchant Shipping Act, 1854,’ with respect to persons who wilfully  
“impede an inspector, or disobey a requisition  
“or order of an inspector, shall apply as if those  
“provisions were herein enacted, with the substitution for the inspector of any Judge,  
“assessor, officer, or surveyor who under this  
“Act has the same powers as an inspector or  
“has authority to survey a ship.”—39 & 40  
Vict. c. 80, s. 12.

A right of appeal under the above enactments arises so soon as a survey and report have been made in pursuance of the provisional order obtained for that purpose. Right of appeal.

Such right of appeal is, as regards British ships, conferred by subsections 4 and 5 of section 6(*n*) of “The Merchant Shipping Act, 1876.” Subsection 4 provides (it will be recollected) that “before the order for such detention is made, a  
“copy of the report shall be served upon the master of the  
“ship, and within seven days after such service the owner or  
“master of the ship may appeal in the prescribed manner to  
“the Court of Survey (hereinafter mentioned (*o*)) for the port  
“or district where the ship is detained.” Subsection 5(*p*), after enabling the master or owner of a ship provisionally detained, to require that the person appointed to survey shall be accompanied by one of the persons named in the list of assessors, directs that “if the surveyor and assessor agree, the  
“Board of Trade shall cause the ship to be detained or released  
“accordingly, but if they differ, the Board of Trade may act  
“as if the requisition (*q*) had not been made, and the owner  
“and master shall have the like appeal touching the report of  
“the surveyor as is before provided by this section.” —As regards British ships.

The right of appeal against the surveyor's report is, as regards foreign ships, conferred by section 13(*qq*) of “The Merchant Shipping Act, 1876,” subsection 2 of which, after providing that where a foreign ship is detained the consular officer may require an assessor to accompany the surveyor, enacts that “if the surveyor and such person agree, the Board  
“of Trade may cause the ship to be detained or released  
“accordingly, but if they differ, the Board of Trade may act  
“as if the requisition (*r*) had not been made, and the owner —As regards foreign ships.

(*n*) Set out in full, *supra*, p. 828.

(*o*) Mentioned in section 7 of the Act (the section above quoted being section 6).

(*p*) Set out in full, *supra*, p. 828.

(*q*) *I. e.* a requisition under subsect. 5 for an assessor to accompany the surveyor. (*qq*) *Ante*, pp. 830, 831.

(*r*) *I. e.* for an assessor to accompany the surveyor.

“and master shall have the appeal to the Court of Survey touching the report of the surveyor which is before provided “by this Act” (s).

Right of appeal given only to ship-owner or master, and not to Board of Trade.

Power of Board of Trade to refer matters to Courts of Survey.

It will be noticed that under all the above enactments, the right of appeal is only given to the master or owner of the ship, in the event of the surveyor's report being unfavourable to the ship. No right of appeal is given to the Board of Trade in the event of the surveyor's report being favourable to the ship.

It is, however, provided by a subsection (subsection 6 of section 6), different from those already referred to, that the Board of Trade may “at any time” refer matters arising under the Act to a Court of Survey. It is apprehended that there is nothing to prevent a reference to a Court of Survey being made by the Board of Trade after a surveyor's report favourable to the ship. If this be so, the subsection in question does practically confer on the Board of Trade a right of appeal against the surveyor's report. The words of such subsection are (it will be recollected) as follow :—“Where a ship has “been provisionally detained, the Board of Trade may at any “time, if they think it expedient, refer the matter to the Court “of Survey for the port or district where the ship is detained.”

Power of Board of Trade to refer appeal to a scientific referee.

Moreover, where an appeal has been actually brought, the Board of Trade has a discretionary power in cases where, *in their opinion*, such appeal *involves a question of construction or design, or of scientific difficulty or important principle*. Where this is the case, the Board of Trade may refer the matter to such one or more out of a list of scientific referees, by whom the appeal shall be determined instead of by the Court of Survey, which is accordingly under such circumstances de-



"The referee or referees shall have the same powers as a Judge of the Court of Survey."—39 & 40 Vict. c. 80, s. 15.

Secondly, a duly constituted Court of Survey possesses jurisdiction to entertain an appeal on the refusal of certain ship certificates, under "The Merchant Shipping and Passenger Acts."

"The Merchant Shipping Act, 1876," provides as follows:—

"Whereas by section three hundred and nine of 'The Merchant Shipping Act, 1854,' and enactments amending the same, the owner of a passenger steamer as defined in that Act is required to cause the same to be surveyed by a shipwright surveyor and an engineer surveyor, and those surveyors are required to give declarations of certain particulars with respect to the sufficiency or conformity with the Act of the ship and equipments, and to the limits beyond which the ship is not fit to ply, and to the number of passengers which the ship is fit to carry, and of other particulars in the said section mentioned, and the Board of Trade, under section three hundred and twelve of the same Act, issue a certificate upon such declarations, and the passenger steamer cannot lawfully proceed to sea without obtaining such certificate;

"And whereas under sections eleven and fifty of 'The Passengers Act, 1855,' and the enactments amending the same, a passenger ship within the meaning of those sections (in this Act referred to as an emigrant ship) cannot lawfully proceed to sea without a certificate of clearance from an emigration officer, or other officer in those sections mentioned, showing that all the requirements of the said sections and enactments have been complied with, and that the ship is in the officer's opinion seaworthy, and that the passengers and crew are in a fit state to proceed to sea, and otherwise as therein mentioned;

"And whereas by section thirty of 'The Merchant Shipping Act Amendment Act, 1862,' provision is made for preventing a ship from proceeding to sea in certain cases without a certificate from a surveyor or person appointed by the Board of Trade to the effect that the ship is properly provided with lights, and with the means of making fog signals;

"And whereas it is expedient to give in the said cases such appeal as hereinafter mentioned: Be it therefore enacted that—

"If a shipowner feels aggrieved,

"(1.) by a declaration of a shipwright surveyor or  
 "an engineer surveyor respecting a passenger  
 "steamer under the above-recited enactments,  
 "or by the refusal of a surveyor to give the said  
 "declaration; or

"(2.) by the refusal of a certificate of clearance for an

(2.) Jurisdiction to entertain appeals against certificates of passenger steamers.

Shipowner may appeal against refusal of certificates to a passenger steamer.

*The Merchant Shipping Act, 1876, s. 14.*

*The Mer-  
chant Ship-  
ping Act,  
1876, s. 14.*

- “ emigrant ship under the above-recited enact-  
 “ ments ; or  
 “ (3.) by the refusal of a certificate as to lights or fog  
 “ signals under the above-recited enactment,  
 “ the owner may appeal in the prescribed manner to the Court  
 “ of Survey for the port or district where the ship for the time  
 “ being is.  
 “ On such appeal the Judge of the Court of Survey shall  
 “ report to the Board of Trade on the question raised by the  
 “ appeal, and the Board of Trade, when satisfied that the  
 “ requirements of the report and the other provisions of the  
 “ said enactments have been complied with, may,—  
 “ (1.) In the case of a passenger steamer give their certifi-  
 “ cate under section three hundred and twelve  
 “ of ‘ The Merchant Shipping Act, 1854,’ and  
 “ (2.) In the case of an emigrant ship give, or direct the  
 “ emigration or other officer to give, a certificate  
 “ of clearance under the above-mentioned enact-  
 “ ments, and  
 “ (3.) In the case of a refusal of a certificate as to lights  
 “ or fog signals, give or direct a surveyor or  
 “ other person appointed by them to give a  
 “ certificate under section thirty of ‘ The Mer-  
 “ chant Shipping Act Amendment Act, 1862.’  
 “ Subject to any order made by the Judge of the Court of  
 “ Survey, the costs of and incidental to an appeal under this  
 “ section shall follow the event.  
 “ Subject as aforesaid, the provisions of this Act with respect  
 “ to the Court of Survey and appeals thereto, so far as consistent  
 “ with the tenour thereof, shall apply to the Court of Survey when

It is to be observed that this section provides that, "*subject, as aforesaid, the provisions of this Act with respect to the Court of Survey and appeals thereto, so far as consistent with the tenour thereof, shall apply to the Court of Survey when acting under this section, and to appeals under this section.*"

### SECTION III.—THE PRACTICE IN THE COUNTY COURTS AS COURTS OF SURVEY.

"The Rules of the Courts of Survey, 1876" (t), provide as follows with regard to notice of appeal :—

Notice of appeal.

"Where the owner or master of a ship, hereinafter called the "appellant, desires to appeal to a Court of Survey, he shall file "at the office of the registrar of the Court of Survey for the "London district, or for the district in which the ship is, hereinafter called the Court, a notice in the Form No. 1 in "Appendix B." (u).—Rules of Court of Survey, 1876, r. 7.

Notice of appeal to be filed with Registrar.

Rule 7.

"The Rules of Court of Survey, 1876," provide as follows on the subject of parties :—

Parties.

"The Board of Trade and the appellant shall be parties to "the proceedings."—Rules of the Courts of Survey, 1876, r. 17.

Board of Trade and appellants to be parties to the proceedings.

Rule 17.

"Any other person, on entering an appearance, may, by permission of the Judge, be made a party to the proceedings."—Rules of the Courts of Survey, 1876, r. 18.

Any other person by permission of Judge.

Rule 18.

(t) The authority to make rules and the provision of rules made under it has been already set out. See *ante*, pp. 823, 824.

(u) The Form here referred to is as follows :—

#### No. 1. Notice of Appeal.

##### The Merchant Shipping Acts, 1854 to 1876.

In the matter of the ship *Marian*.

To the Registrar of the Court of Survey for

Take notice that I [*name and address*] the master [*or managing owner or owner of shares*], of the ship , of the port of , do appeal

(1) from the report of *L. M.*, the surveyor appointed by the Board of Trade to survey the said ship.

*or* (2) from a declaration given by , a shipwright surveyor or engineer (*or from the refusal of* , a shipwright surveyor or engineer to give a declaration), under the provisions of section 309 of "The Merchant Shipping Act, 1854."

*or* (3) from the refusal of , an emigration officer (*or as the case may be*) to give a certificate of clearance under sections 11 and 50 of "The Passengers Act, 1855."

*or* (4) from the refusal of , appointed by the Board of Trade under the provisions of section 30 of "The Merchant Shipping Act Amendment Act, 1862," to give a certificate that the said ship is properly provided with lights and with the means of making fog signals.

The address at which all notices and documents may be served by post or otherwise on me is

Dated this day of .

(To be signed by the appellant).

**Summoning  
a Court of  
Survey.**

**Fact of filing  
notice of  
appeal to  
be given to  
Board of  
Trade, who  
determine if  
appeal is to  
be heard by  
Wreck Com-  
missioner.**

**Rule 8.**

**If appeal not  
to be heard by  
Wreck Com-  
missioner,  
Registrar  
ascertains  
name of Judge  
and date of  
hearing.**

**Rule 9.**

**One assessor  
to be selected  
from list by  
Registrar, or  
if no list by  
Judge.**

It will be remembered that "The Merchant Shipping Act, 1876," provides, that if the Board of Trade are of opinion that an appeal under this Act involves a question of construction or design, or of scientific difficulty or important principle, they may refer the matter to scientific referees, who shall determine the appeal in lieu of the Court of Survey (r). Where no such difficult questions are involved, the appeal is to the Court of Survey; and, as this Court does not hold regular sittings like an ordinary Court of justice, it requires to be summoned as cases arise for its determination.

The following rules of "The Rules of the Court of Survey, 1876," relate to the summoning of the Court:—

"Immediately upon the filing of the notice of appeal, the registrar shall communicate the fact, by telegraph and letter, to the Board of Trade, who shall thereupon inform him whether they intend to have the appeal heard by a wreck commissioner, and, if so, on what day."—Rules of the Courts of Survey, r. 8.

"If the Board of Trade inform him that they do not intend to have the appeal heard by a wreck commissioner, the registrar shall forthwith ascertain which of the other Judges of the Court will hear the appeal, and on what day."—Rules of the Courts of Survey, r. 9.

"On ascertaining when the hearing will take place, the registrar shall, if there is a list of assessors for the Court, select therefrom the person who is, in his opinion, the best qualified to act as assessor on the appeal; or if there is no such list, he will take the instructions of the Judge as to the assessor to be appointed."—Rules of the Courts of Survey, r. 10.

"The Board of Trade shall appoint the other assessor, and shall forthwith send the name and address of such assessor to

"notice thereof to the Board of Trade and to the appellant, in the Form No. 3 in Appendix B (z)."—Rules of the Courts of Survey, r. 13.

"If the survey has been made on the complaint of any person (hereinafter called the complainant), the Board of Trade shall send to him notice of the time and place appointed for the hearing."—Rules of the Courts of Survey, r. 14.

"Previous to the hearing, the Board of Trade shall forward to the registrar, to be produced as evidence at the hearing, an official copy of the report of the surveyor."—Rules of the Courts of Survey, r. 15.

"The Court shall, if practicable, be summoned to hear the appeal on a day not later than fourteen days from the filing of the notice of appeal."—Rules of the Courts of Survey, r. 16.

With regard to the swearing of affidavits, "The Rules of the Courts of Survey, 1876," provide as follows:—

"Affidavits may, by permission of the Judge, be used at the hearing, when sworn to in any of the following ways; viz.,

"In the United Kingdom, before any Judge or registrar of a Court of Survey, or before a person authorised to administer oaths in the Supreme Court of Judicature, or before a commissioner empowered to take or receive affidavits, or before a justice of the peace for the county or place where it is sworn or made.

"In any place in the British dominions out of the United Kingdom, before any Court, Judge, or justice of the peace, or any person authorised to administer oaths there in any Court.

Board of Trade.

Rule 13.

Board of Trade also sends notice to complainant, if any.

Rule 14.

Before hearing surveyor's report is sent to Registrar.

Rule 15.

Court of Survey to be summoned, if practicable, within 14 days from filing of notice of appeal.

Rule 16.

Swearing of affidavits.

In pursuance of the "The Merchant Shipping Act, 1876," I hereby summon you to attend as Judge [or assessor] on this appeal, at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, at the hour of \_\_\_\_\_, in the \_\_\_\_\_ noon.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 187 . \_\_\_\_\_ Registrar.

I will attend as summoned.

\_\_\_\_\_  
Signature of person summoned.

(c) The Form referred to is as follows:—

### No. 3. Notice of Sitting of Court of Survey.

The Merchant Shipping Acts, 1854 to 1876.

The Court of Survey for \_\_\_\_\_

In the matter of an appeal by \_\_\_\_\_, from the report of *L. M.*, the surveyor, appointed by the Board of Trade to survey *The Marian* [or as the case may be].

To *A. B.*, the master [or managing owner, or owner of \_\_\_\_\_ shares] of the ship \_\_\_\_\_, the appellant [or the Board of Trade].

Take notice that the Court of Survey will meet at \_\_\_\_\_, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 187 , at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, to hear the appeal in the above matter.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 187 . \_\_\_\_\_

\_\_\_\_\_  
Registrar.

"In any place out of the British dominions, before a  
 "British minister, consul, vice-consul, or notary pub-  
 "lic, or before a Judge or magistrate, his signature  
 "being authenticated by the official seal of the Court  
 "to which such Judge or magistrate is attached."—  
 Rules of the Courts of Survey, r. 22.

Preparation  
for the  
hearing.

Provision as  
to notices to  
produce and  
admit.

Notice to  
produce.

*Rule 19.*

Let us now consider what preparation for the hearing must be made.

"The Rules of the Court of Survey, 1876," provide as follows in regard to the giving of notices to produce and admit :—

"Either party may give to the other a notice in writing to  
 "produce such documents (saving all just exceptions) as relate  
 "to any matters in difference, and which are in the possession  
 "or control of such other party ; and if such notice be not  
 "complied with, secondary evidence of the contents of the  
 "said documents may be given by or on behalf of the party  
 "who gave such notice."—Rules of the Courts of Survey,  
 r. 19.

Notice to  
admit.

*Rule 20.*

"Either party may give to the other party a notice in writing  
 "to admit any documents (saving all just exceptions) ; and in  
 "case of neglect or refusal to admit after such notice, the party  
 "so neglecting or refusing shall be liable for all the costs of  
 "proving such documents, whatever the result may be, unless  
 "the Court is of opinion that the refusal to admit was reason-  
 "able ; and no costs of proving any document shall be allowed  
 "unless such notice be given, except where the omission to  
 "give the notice is, in the opinion of the officer by whom the  
 "costs are taxed, a saving of expense."—Rules of the Courts  
 of Survey, r. 20.

Power of

"The wreck commissioner shall have power to issue sub-

- “persons to survey the ship and report thereon to the Court ;
- “(4.) The Judge shall have the same power as the Board of Trade have to order the ship to be released or finally detained, but unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released ;
- “(5.) The owner and master of the ship and any person appointed by the owner or master, and also any person appointed by the Board of Trade, may attend at any inspection or survey made in pursuance of this section ;
- “(6.) The Judge shall send to the Board of Trade the prescribed report, and each assessor shall either sign the report or report to the Board of Trade the reasons for his dissent.”—39 & 40 Vict. c. 80, s. 8.

*The Merchant Shipping Act, 1876, s. 8.*

At hearing, Board of Trade first call their witnesses and make written statement of order they require.

*Rule 23.* Then the complainant, if any, does the like.

*Rule 24.* Then the appellant calls his witnesses and makes a written statement of order he requires.

*Rule 25.* Witnesses in reply may be called by leave of Judge.

*Rule 26.* Order in which parties to be heard by the Court.

*Rule 27.* Adjournment of Court.

*Rule 28.* Decision of Court is either oral or written.

“The Rules of the Court of Survey, 1876,” provide as follows with regard to proceedings in Court :—

“At the hearing, the Board of Trade shall first call their witnesses, and having done so shall state in writing what order they require the Court to make.”—Rules of the Courts of Survey, r. 23.

“The complainant, if he has appeared, shall then call his witnesses, and having done so shall state in writing what order he requires the Court to make.”—Rules of the Courts of Survey, r. 24.

“The appellant shall then call his witnesses, and having done so shall state in writing what order he requires the Court to make.”—Rules of the Courts of Survey, r. 25.

“After the appellant has examined all his witnesses, the Board of Trade and the complainant may, on cause shown to the satisfaction of the Judge, call further witnesses in reply.”—Rules of the Courts of Survey, r. 26.

“After all the witnesses have been examined, the Court shall first hear the appellant, then the complainant (if any), and afterwards the Board of Trade.”—Rules of the Courts of Survey, r. 27.

“The Judge may adjourn the Court from time to time and from place to place, as may be most convenient.”—Rules of the Courts of Survey, r. 28.

“The Judge may deliver the decision of the Court either *visâ voce* or in writing ; and, if in writing, it may be sent or delivered to the respective parties, and it shall not be necessary to hold a Court merely for the purpose of giving the decision.”—Rules of the Courts of Survey, r. 29.

“As soon as possible after the Court has come to its decision, the Judge shall issue an order for the release or detention (either finally or on condition) of the vessel in the Form

to be issued,

**Rule 30.**

Judge's report  
to Board of  
Trade.

**Rule 31.**

Liability of  
Board of  
Trade and  
shipowners  
for costs and  
damages when  
ship has been  
detained.

If no reason-  
able and prob-  
able cause for  
detention of  
ship, liability  
to Board of  
Trade to pay  
owner costs  
and damages.

Liability of

"No. 4 in Appendix B." (a)—Rules of the Courts of Survey,  
r. 30.

"The Judge shall report to the Board of Trade in the Form  
"No. 5 in Appendix B." (b).—Rules of the Courts of Survey,  
r. 31.

With regard to the liability of the Board of Trade and ship-  
owners for costs and damages, where the appeal is from an order  
as to the detention of a ship, "The Merchant Shipping Act,  
1876," provides as follows:—

"If it appears that there was not reasonable and probable  
cause, by reason of the condition of the ship or the act or  
default of the owner, for the provisional detention of the ship,  
"the Board of Trade shall be liable to pay to the owner of the  
"ship his costs of and incidental to the detention and survey  
"of the ship, and also compensation for any loss or damage  
"sustained by him by reason of the detention or survey.

"If a ship is finally detained under this Act, or if it appears  
"that a ship provisionally detained was, at the time of such de-  
"tention, unsafe within the meaning of this Act, the owner of

(a) The Form referred to is as follows:—

*No. 4. Order of Court for Release or Detention of Ship.*

The Merchant Shipping Act, 1854 to 1876.

The Court of Survey for

In the matter of an appeal by \_\_\_\_\_, from the report of *L. M.*, the  
surveyor appointed by the Board of Trade to survey *The Marian* [or as the case  
may be].

I, \_\_\_\_\_, do, with the concurrence of \_\_\_\_\_, order the said ship  
to be released or detained [finally or conditionally upon \_\_\_\_\_].

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_ Judge.

We [or I] concur in the above report.



"the ship shall be liable to pay to the Board of Trade their costs of and incidental to the detention and survey of the ship, and those costs shall, without prejudice to any other remedy, be recoverable as salvage is recoverable.

"For the purposes of this Act the costs of and incidental to any proceeding before a Court of Survey, and a reasonable amount in respect of the remuneration of the surveyor or officer of the Board of Trade, shall be deemed to be part of the costs of the detention and survey of the ship, and any dispute as to the amount of costs under this Act may be referred to one of the masters or registrars of the Supreme Court of Judicature, who, on request made to him for that purpose by the Board of Trade, shall ascertain and certify the proper amount of such costs.

"An action for any costs or compensation payable by the Board of Trade under this section may be brought against the secretary thereof by his official title as if he were a corporation sole; and if the cause of action arises in Ireland, it shall be lawful for any of the Superior Courts of common law in Ireland in which such action may be commenced to order that the summons or writ may be served on the Crown and Treasury Solicitor for Ireland, in such manner and on such terms as to extension of time and otherwise as to the Court shall seem fit, and that such service shall be deemed good and sufficient service of such summons or writ upon the secretary of the Board of Trade."—39 & 40 Vict. c. 80, s. 10.

In the event of the Board of Trade being condemned to pay costs and compensation in pursuance of this Act, it is provided that they may be paid out of moneys provided by Parliament (c). But it is to be noticed that the Board of Trade will not be so condemned unless it be proved that there was not reasonable and probable cause for the provisional detention of the ship. And it has been held, in a case decided under "The Merchant Shipping Act, 1873," that the Board of Trade may be justified in detaining a ship where, though neither the letter of complaint against the ship nor the surveyor's report as to its condition stated, in so many words, that it was *unfit to proceed to sea without serious danger to human life*, yet in substance this inference could be drawn from those documents (d). As to whether, in the event of the Board of Trade exceeding their jurisdiction, the plaintiff is deprived of his common law remedy by action, or whether his only remedy is by way of appeal under the Act, is a moot point (e).

owner to costs if ship prove unsafe and detention be justified.

What the costs of the detention and survey of the ship include.

*The Merchant Shipping Act, 1876, s. 10.*

(c) 39 & 40 Vict. c. 80, s. 39, *ante*, pp. 821—823.

(d) See *Lewis v. Gray*, 1 C. P. D. 462. Though this case was decided on sections of "The Merchant Shipping Act, 1873," which are now repealed, yet as very similar provisions occur in "The Merchant Shipping Act, 1876," the case may be considered as still binding.

(e) *Id.*

In cases of appeals on refusal of certain certificates, the costs follow the event.

The Court may, by consent of parties, decide whether costs or damages are due, and assess amount thereof.

*Rule 32.*

Form of order for payment of costs, or costs and damages.  
*Rule 33.*

In regard to appeals on the refusal of certain certificates to ships (*f*), it is provided that, "*subject to any order made by the Judge of the Court of Survey, the costs of and incidental to an appeal under this section shall follow the event*" (*g*).

In regard to costs and damages, "The Rules of the Courts of Survey, 1876," provide as follows:—

"The Court may, if the parties consent thereto in writing, decide whether costs or costs and damages are due, and to and from whom, and may assess the amount thereof; or the parties may, by consent in writing, refer the question to the wreck commissioner."—Rules of the Courts of Survey, r. 32.

"The order for the payment of costs or of costs and damages shall be in the Form No. 6 in Appendix B." (*h*)—Rules of the Courts of Survey, r. 33.

(*f*) 39 & 40 Vict. c. 80, s. 14, *ante*, pp. 835, 836.

(*g*) *Ib.*

(*h*) The Form referred to is as follows:

*No. 6. Order for Payment of Costs, or of Costs and Damages.*

The Merchant Shipping Acts, 1851 to 1876.

The Court of survey for

In the matter of an appeal by \_\_\_\_\_, from \_\_\_\_\_

[The parties to this appeal having, by agreement in writing, consented to refer the question whether any costs or costs and damages are due, and to and from whom, to me or us, with liberty to assess the amount thereof], I order

(1) that the Board of Trade do pay to the appellant the sum of \_\_\_\_\_ for the costs [or the costs and damages] incurred by reason of such detention and survey.

or (2) that the appellant do pay to the Solicitor of the Board of Trade the sum of \_\_\_\_\_ for the costs incurred by reason of the detention and survey of the said ship.

or (3) that each party pays his own costs.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_

18 .

Judge

“ obtaining probate and administration where there  
 “ is no contention as to the right thereto, including  
 “ the passing of probates and administrations through  
 “ the Court of Probate in contentious cases when  
 “ the contest is terminated, and all business of a  
 “ non-contentious nature to be taken in the Court in  
 “ matters of testacy and intestacy, not being pro-  
 “ ceedings in any suit, and also the business of lodging  
 “ caveats against the grant of probate or administra-  
 “ tion.”—20 & 21 Vict. c. 77, s. 2.

The abolition of all previously existing Courts of Probate was effected by a section of “The Court of Probate Act, 1857,” in the following terms :—

Abolition  
of other  
Courts.

“ The voluntary and contentious jurisdiction and authority  
 “ of all ecclesiastical, royal peculiar, peculiar, manorial, and  
 “ other Courts and persons in England now having jurisdic-  
 “ tion or authority to grant or revoke probate of wills or letters  
 “ of administration of the effects of deceased persons, shall in  
 “ respect of such matters absolutely cease ; and no jurisdiction  
 “ or authority in relation to any matters or causes testamentary,  
 “ or to any matter arising out of or connected with the grant or  
 “ revocation of probate or administration, shall belong to or  
 “ be exercised by any such Court or person.”—20 & 21 Vict.  
 c. 77, s. 3.

*The Court  
of Probate  
Act, 1857,  
s. 3.*

The establishment of the Court of Probate—which by “The Judicature Act, 1873 (b),” has now become a division of the High Court of Justice—was effected by the following section :—

“ The voluntary and contentious jurisdiction and authority  
 “ in relation to the granting or revoking probate of wills and  
 “ letters of administration of the effects of deceased persons  
 “ now vested in or which can be exercised by any Court or  
 “ person in England, together with full authority to hear and  
 “ determine all questions relating to matters and causes testa-  
 “ mentary, shall belong to and be vested in Her Majesty, and  
 “ shall, except as herein-after is mentioned, be exercised in the  
 “ name of Her Majesty in a Court to be called the Court of  
 “ Probate, and to hold its ordinary sittings and to have its  
 “ principal registry at such place or places in London or  
 “ Middlesex as Her Majesty in Council shall from time to time  
 “ appoint.”—20 & 21 Vict. c. 77, s. 4.

*The Court  
of Probate  
Act, 1857,  
s. 4.*

The establishment of district registries of the “Court of Probate,” established by the section just set out, is effected in the following terms :—

Establishment  
of District  
Registries.

“ There shall be established for each of the districts specified

(b) See 36 & 37 Vict. c. 66 (“The Judicature Act, 1873”) s. 3 and s. 15.

*The Court of Probate Act, 1857, s. 13.*

“ in Schedule (A.) to this Act (c), and at the places respectively  
“ mentioned in such schedule, a public registry attached to and  
“ under the control of the Court of Probate, hereinafter referred  
“ to as ‘ the district registry.’ ”—20 & 21 Vict. c. 77, s. 13.

(c) The schedule to the Act is as follows :—

#### SCHEDULE (A.)

#### DISTRICTS AND PLACES OF DISTRICT REGISTRIES THROUGHOUT ENGLAND AND WALES.

Districts.	Places of District Registries.	Districts.	Places of District Registries.
County of Northumberland (a)	Newcastle-on-Tyne.	County of Norfolk (g) .	Norwich.
County of Durham . .	Durham.	Eastern Division of the County of Suffolk and North Division of the County of Essex.	Ipswich.
Counties of Cumberland and Westmoreland.	Carlisle.	Western Division of the County of Suffolk.	Bury St. Edmunds.
West Riding of the County of York.	Wakefield.	County of Bedford and Southern Division of Northamptonshire (h).	Northampton.
North Riding ditto . }	York.	County of Warwick (i).	Birmingham.
East Riding ditto (b) including the City of York and Ainsty }		County of Stafford (k)	Lichfield.
County of Lancaster, except the Hundred of Salford and West Derby and the City of Manchester.	Lancaster.	Counties of Radnor, Brecknock, and Hereford.	Hereford.
City of Manchester and Hundred of Salford.	Manchester.	Counties of Cardigan, Carmarthen (l), and Pembroke (m), with the Deaneries of East and West Gower in the County of Glamorgan.	Carmarthen.
Hundred of West Derby in Lancashire.	Liverpool.	Counties of Glamorgan and Swansea (n).	Llandaff.
County of Chester (c) .	Chester.		
Counties of Carnarvon and Anglesea.	Bangor.		
County of Flint, Denbigh, and Merioneth.	St. Asaph.		

Power to grant probates is given to the district registries by the following enactments :—

“ Probate of a will or letters of administration may, upon application for that purpose to the district registry, be granted in common form by the district registrar in the name of the Court of Probate and under the seal appointed to be used in such district registry, if it shall appear by affidavit of the person or some or one of the persons applying for the same that the testator or intestate, as the case may be, at the time of his death had a fixed place of abode within the district in which the application is made, such place of abode being stated in the affidavit, and such probate or letters of administration shall have effect over the personal estate of the deceased in all parts of England accordingly.”—20 & 21 Vict. c. 77, s. 46.

“ Such affidavit shall be conclusive for the purpose of authorising the grant, by the district registrar, of probate or administration ; and no such grant of probate or administration shall be liable to be recalled, revoked, or otherwise impeached by reason that the testator or intestate had no fixed place of abode within the district at the time of his death ; and every probate and administration granted by any such district registrar shall effectually discharge and protect all persons paying to or dealing with any executor or administrator thereunder, notwithstanding the want of or defect in such affidavit, as is hereby required.”—20 & 21 Vict. c. 77, s. 47.

The County Courts are constituted local Courts of Probate by an enactment which will be found set out in full on a

Power of district registries to grant probates.

District registries may grant probates.

*The Court of Probate Act, 1857,* s. 46.

And affidavits to head probate shall be conclusive evidence of their jurisdiction.

*The Court of Probate Act, 1857,* s. 47.

County Courts constituted Local Courts

Districts.	Places of District Registries.	Districts.	Places of District Registries.
Counties of Oxford (p), Berks, Bucks.	Oxford.	County of Devon (q) .	Exeter.
Eastern Division of the County of Somerset, except the present Bath County Court District, and the part in Somersetshire of the present Bristol County Court District.	Wells.	County of Cornwall .	Bodmin.
		County of Wilts .	Salisbury.
		County of Dorset (r) .	Blandford.
Western Division of the County of Somerset.	Taunton.	County of Hants (s) .	Winchester.
		Eastern Division of the County of Sussex (t) .	Lewes.
		Western Division of the County of Sussex.	Chichester.
		East Division of the County of Kent (u) .	Canterbury.

Schedule A. to “The Probate Act, 1857.”

The divisions of counties referred to in the Schedule are the divisions of the same counties described for election purposes in the Act of the second and third years of King William the Fourth, chapter sixty-four, and the cities and towns herein referred to are to be taken to include the counties of such cities and towns as are counties of themselves.

(p) Including the University of Oxford.

(q) Including the City of Exeter.

(r) Including the Town of Poole.

(s) Including the Town of Southampton and Isle of Wight.

(t) Including such of the Cinque Ports

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and their Dependencies as are locally situate in the County of Sussex.

(u) Including the City of Canterbury and such of the Cinque Ports and their Dependencies as are locally situate in the County of Kent.

of Probate in certain small cases.

*The Probate Act, 1858,*  
s. 10.

Powers possessed by the County Courts as Local Courts of Probate.

Courts are Courts of Record.

*The Probate Act, 1857,*  
s. 23.

subsequent page (*f*), and the terms of which, so far as relevant to the present subject, are as follows :—

“Where it appears by affidavit . . . that the testator or “intestate . . . had at the time of his death his fixed place “of abode in one of the districts specified in schedule (A.) to “the said ‘Court of Probate Act,’ and that the personal “estate . . . was at the time of his death under the value of “£200, and that the deceased at the time of his death was not “seised or entitled beneficially of or to any real estate of the “value of £300 or upwards, the Judge of the County Court “having jurisdiction in the place in which the deceased had “at the time of his or her death a fixed place of abode, shall “have the contentious jurisdiction and authority of the Court “of Probate in respect of questions as to the grant and revocation of probate of the will or letters of administration of “the effects of such deceased person, in case there be any contention in relation thereto.”—21 & 22 Vict. c. 95, s. 10.

The enactments from which the powers of County Courts as Local Courts of Probate are derived, in some cases do not expressly mention County Courts. But the words of the enactment constituting these Courts to be Courts of Probate are, it will be noted, very large—since it is provided that the County Courts, with regard to the cases specified, “shall have the contentious jurisdiction and authority of the Court of Probate.” The principal matters to be noted with regard to such constitution and powers are the following :—

The Court of Probate is constituted a Court of Record by the following enactment :—

“The Court of Probate shall be a Court of Record, and such “Court shall have the same powers, and its grants and orders “shall have the same effect, throughout all England, and in “relation to the personal estate in all parts of England of “deceased persons, as the Prerogative Court of the Archbishop “of Canterbury and its grants and orders respectively now “have in the province of Canterbury, or in the parts of such “province within its jurisdiction, and in relation to those “matters and causes testamentary and those effects of deceased “persons which are within the jurisdiction of the said Prerogative Court ; and all duties which, by statute or otherwise, “are imposed on or should be performed by ordinaries generally, or on or by the said Prerogative Court, in respect of “probates, administrations, or matters or causes testamentary “within their respective jurisdictions, shall be performed by “the Court of Probate : Provided that no suits for legacies, “or suits for the distribution of residues, shall be entertained “by the Court, or by any Court or person whose jurisdiction “as to matters and causes testamentary is hereby abolished.”—20 & 21 Vict. c. 77, s. 23.

(*f*) See *post*, p. 855.

A general power of enforcing its decrees and orders, and of punishing for contempts, is *expressly* conferred on the Probate Division of the High Court, and hence, by *implication*, on the County Courts. On this subject "The Court of Probate Act, 1857," provides as follows:—

General power of enforcing decrees and orders, and punishing for contempts.

"The Court of Probate shall have the like powers, jurisdiction, and authority for enforcing the attendance of persons required by it as aforesaid, and for punishing persons failing, neglecting, or refusing to produce deeds, evidences, or writings, or refusing to appear or to be sworn, or make affirmation or declaration, or to give evidence, or guilty of contempt, and generally for enforcing all orders, decrees, and judgments made or given by the Court under this Act, and otherwise in relation to the matters to be inquired into and done by or under the orders of the Court under this Act, as are by law vested in the High Court of Chancery for such purposes in relation to any suit or matter depending in such Court."—20 & 21 Vict. c. 77, s. 25.

*The Probate Act, 1857, s. 25.*

As to rules of practice:—The County Court Judges who are for the time being appointed to frame rules for regulating the procedure and practice of the County Courts in ordinary actions (*h*), are empowered to frame rules for the like purpose, and also scales of costs, under "The Probate Act, 1857," and "The Probate Act, 1858." The sections conferring such power are as follows:—

Rules of practice.

"For regulating the procedure and practice of the County Courts, and the Judges, registrars, and officers thereof, in relation to their jurisdiction and proceedings under this Act, rules and orders may be from time to time framed, amended, and certified by the County Court Judges appointed for the time being to frame rules and orders for regulating the practice of the County Courts under the Act of the session holden in the nineteenth and twentieth years of Her Majesty, chapter one hundred and eight, and shall be subject to be allowed or disallowed or altered, and shall be in force from the day named for that purpose by the Lord Chancellor, as in the said Act is provided in relation to other rules and orders regulating the practice of the same Courts; and for establishing rules and orders to be in force when this Act comes into operation, the power given by this enactment shall be exercised as soon as conveniently may be after the passing of this Act."—20 & 21 Vict. c. 77, s. 60.

Rules and Orders as to the procedure and scales of costs to be made by the Judges now having authority for the like purpose. *The Probate Act, 1857, s. 60.*

"The power and authority to make rules and orders for regulating the proceedings of the County Courts shall extend and be applicable to all proceedings in the County Courts under this Act, and also to framing a scale of costs and charges to be paid to counsel, proctors, solicitors, and attornies, in respect of proceedings in County Courts, under the said Court of Probate Act or this Act."—21 & 22 Vict. c. 95, s. 13.

*The Probate Court Act, 1858, s. 13.*

(h) Book I. cap. i. p. 29 *et seq.*

of Probate in  
certain small  
cases.

*The Probate  
Act, 1858,  
s. 10.*

Powers pos-  
sessed by  
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subsequent page (*f*), and the terms of which, so far as relevant to the present subject, are as follows :—

“Where it appears by affidavit . . . that the testator or intestate . . . had at the time of his death his fixed place of abode in one of the districts specified in schedule (A.) to the said ‘Court of Probate Act,’ and that the personal estate . . . was at the time of his death under the value of £200, and that the deceased at the time of his death was not seised or entitled beneficially of or to any real estate of the value of £300 or upwards, the Judge of the County Court having jurisdiction in the place in which the deceased had at the time of his or her death a fixed place of abode, shall have the contentious jurisdiction and authority of the Court of Probate in respect of questions as to the grant and revocation of probate of the will or letters of administration of the effects of such deceased person, in case there be any contention in relation thereto.”—21 & 22 Vict. c. 95, s. 10.

The enactments from which the powers of County Courts as Local Courts of Probate are derived, in some cases do not expressly mention County Courts. But the words of the enactment constituting these Courts to be Courts of Probate are, it will be noted, very large—since it is provided that the County Courts, with regard to the cases specified, “shall have the contentious jurisdiction and authority of the Court of Probate.” The principal matters to be noted with regard to such constitution and powers are the following :—

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General power of enforcing decrees and orders, and punishing for contempts.

"The Court of Probate shall have the like powers, jurisdiction, and authority for enforcing the attendance of persons required by it as aforesaid, and for punishing persons failing, neglecting, or refusing to produce deeds, evidences, or writings, or refusing to appear or to be sworn, or make affirmation or declaration, or to give evidence, or guilty of contempt, and generally for enforcing all orders, decrees, and judgments made or given by the Court under this Act, and otherwise in relation to the matters to be inquired into and done by or under the orders of the Court under this Act, as are by law vested in the High Court of Chancery for such purposes in relation to any suit or matter depending in such Court."—20 & 21 Vict. c. 77, s. 25.

*The Probate Act, 1857,*  
s. 25.

As to rules of practice :—The County Court Judges who are for the time being appointed to frame rules for regulating the procedure and practice of the County Courts in ordinary actions (*h*), are empowered to frame rules for the like purpose, and also scales of costs, under "The Probate Act, 1857," and "The Probate Act, 1858." The sections conferring such power are as follows :—

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Rules and Orders as to the procedure and scales of costs to be made by the Judges now having authority for the like purpose.

*The Probate Act, 1857,*  
s. 60.

"The power and authority to make rules and orders for regulating the proceedings of the County Courts shall extend and be applicable to all proceedings in the County Courts under this Act, and also to framing a scale of costs and charges to be paid to counsel, proctors, solicitors, and attornies, in respect of proceedings in County Courts, under the said Court of Probate Act or this Act."—21 & 22 Vict. c. 95, s. 13.

*The Probate Court Act, 1858,* s. 13.

(h) Book I. *cap. i. p. 29 et seq.*

The Probate  
Rules of 4th  
Feb., 1858.

In pursuance of these enactments, certain rules and orders regulating the practice of the County Courts, under the "Probate Acts," were framed. These rules and orders came into operation on the 4th February, 1858, and are still in force, their operation being expressly prescribed by "The County Court Rules, 1875."

The rules thus made, are now in effect supplemented by the rules made under "The Judicature Acts" of 1873 and 1875 ; and the practice in contentious matters in the County Court, so far as it is not prescribed by statute, is regulated partly by "The Rules of the Court of Probate" (which, so far as they are not expressly or impliedly altered by the rules under "The Judicature Act," still remain in force), partly by "The County Court Probate Rules," and partly by "The Judicature Act Rules." "The County Court Probate Rules" derive their validity from the following operative clause contained at the end of such rules :—

*Clause giving  
validity to  
The County  
Court Pro-  
bate Rules.*

"In pursuance of the powers vested in us by the appointment of the Lord Chancellor, under the provisions of the statute 19 & 20 Vict. c. 108, we, J. Manning, J. H. Koe, E. Cooke, J. Wortledge, and W. Turner, have, under the provisions of the statute 20 & 21 Vict. c. 77, framed the above rules and orders ; and we do hereby certify the same to the Lord Chancellor accordingly.

" J. MANNING,  
" J. H. KOE,  
" E. COOKE,  
" J. WORTLEDGE,  
" W. TURNER.

"I approve of the above to come into force on the 4th day

As to *forms*, although, as appears from the rule (rule 13) of "The Probate Rules, 1858," just set out, the ordinary County Court forms are made applicable to probate proceedings *mutatis mutandis*; special forms are also annexed to "The County Court Probate Rules, 1858." These will be set out in foot-notes, as the reference to them is from time to time made in the pages describing the practice. It may here be noted, that there is a direction at the foot of the Appendix of Forms, to the effect that "as the above forms will seldom be required, they are not to be printed, but are to be written on foolscap paper." Forms.

Next, the subject of fees requires consideration. Now provision has been duly made for the fixing of a table or tables of fees, to be taken by the officers of the Court of Probate, and by the officers of the County Court. On this subject "The Probate Act, 1857," provides as follows:— Fees.

"The Lord Chancellor, with such assistance as is hereinbefore provided as to rules and orders to be made in pursuance of this Act, shall, as soon as conveniently may be after the passing of this Act, fix a table or tables of fees to be taken by the officers of the Court of Probate, and the proctors, solicitors, and attornies practising therein, including the district registrars, and the proctors, solicitors, and attornies practising in district registries, and of fees to be taken by the officers of the County Courts, in respect of business under this Act, and of fees to be payable in respect of searches, inspection, and printed and other copies of and extracts from records, wills, and other documents in the custody or under the control of the Court of Probate, and the Judge of the Court of Probate, with such concurrence as is hereinbefore provided in respect of the amendment of rules and orders, is hereby empowered, from time to time after this Act shall come into operation, to add to, reduce, alter, or amend such table or tables of fees, as he may see fit: Provided that such tables of fees and every alteration of the same, except so far as respects the fees which are to be taken by district registrars, proctors, and others, for their own remuneration and to their own use, shall be subject to the approval of the commissioners of Her Majesty's Treasury; and every such table of fees, and every addition, reduction, alteration, or amendment to, in, or of the same, shall be published in the *London Gazette*; and no other fees than those specified and allowed in such tables of fees shall be demanded or taken by such officers, and proctors, solicitors, and attornies."—20 & 21 Vict. c. 77, s. 95. Fees to be taken by officers of Court, and by officers of County Court.  
*The Probate Court Act, 1857, s. 95.*

It will be seen, on reference thereto, that the Treasury Order set out in an earlier page, contains no express mention of or reference to the above enactments, authorizing a table of fees. But the table of fees referred to in the Treasury Order and contained in the Appendix (i), directs that in every case What fee prescribed.

(i) Appendix I.

where the poundage cannot be estimated by any rule in the schedule, it shall be estimated in a plaint for a sum of £20 (*k*).

*Mode of paying fees.*

As to the *mode* of paying fees, it is expressly provided that they are to be paid in stamps and not in money (*l*). "The Probate Act, 1857," provides as follows on the subject :—

*Fees to be received by stamps and not in money. The Court of Probate Act, 1857, s. 97.*

"None of the fees payable to the officers of the Court of Probate, or of any County Court, in respect of business under this Act, except the fees of the district registrars (which are to be taken as their remuneration, and for their own use), the fees of proctors, solicitors, and attornies, and such fees as may be authorized to be taken for their own use by surrogates and commissioners for administering oaths, shall be received in money, but every such fee shall be collected and received by a stamp denoting the amount of the fee which otherwise would be payable."—20 & 21 Vict. c. 77. s. 97.

*No document to be received or used unless stamped. The Court of Probate Act, 1857, s. 99.*

"No document which under this Act and any table of fees for the time being in force under this Act, ought to have a stamp in respect of such fee impressed thereon or affixed thereto, shall be received or filed or be used in relation to any proceeding in the Court of Probate, or be of any validity for any purpose whatsoever, unless or until the same shall have the proper stamp impressed thereon or affixed thereto : Provided that if any time it shall appear that any such document has through mistake or inadvertence been received, or filed, or used without having such stamp impressed thereon or affixed thereto, it shall be lawful for the Judge of the Court of Probate, if he think fit, to order that such stamp shall be impressed thereon or affixed thereto, and thereupon, when a stamp shall have been impressed on such document or affixed thereto in compliance with any such order, such document and every proceeding in reference thereto shall be as valid and

causes. Their duties will sufficiently appear in connection with the practice in such causes.

County Court act in Probate matters.

## SECTION II.—THE JURISDICTION OF COUNTY COURTS IN CONTENTIOUS PROBATE MATTERS.

The *contentious* jurisdiction of the County Courts in probate matters is either (1) Original, or (2) Derivative.

First, as regards the *original contentious jurisdiction* :—

Probate jurisdiction was formerly conferred on the County Courts by section 54 of “The Court of Probate Act, 1857.” That section has, however, been repealed (*o*), and the jurisdiction now under consideration is exercised in pursuance of the following section of “The Court of Probate Act, 1858” :—

“Where it appears by affidavit to the satisfaction of a Registrar of the principal registry that the testator or intestate in respect of whose estate a grant or revocation of a grant of probate or letters of administration is applied for had at the time of his death his fixed place of abode in one of the districts specified in schedule (A.) to the said ‘Court of Probate Act,’ and that the personal estate in respect of which such probate or letters of administration are to be or have been granted, exclusive of what the deceased may have been possessed of or entitled to as a trustee, and not beneficially, but without deducting anything on account of the debts due and owing from the deceased, was at the time of his death under the value of two hundred pounds, and that the deceased at the time of his death was not seised or entitled beneficially of or to any real estate of the value of three hundred pounds or upwards, the Judge of the County Court having jurisdiction in the place in which the deceased had at the time of his or her death a fixed place of abode shall have the contentious jurisdiction and authority of the Court of Probate in respect of questions as to the grant and revocation of probate of the will or letters of administration of the effects of such deceased person, in case there be any contention in relation thereto.”—21 & 22 Vict. c. 95, s. 10.

Lord Penzance, in the case of *Thomas v. Nurse and Another* (*p*), in reference to this section said : “The terms of the statute are clear. Three things are necessary to confer jurisdiction on the Judge of the County Court. First, that the testator or intestate at the time of his death should have his fixed place of abode in one of certain districts. Secondly, that the personal estate should be under the value of £200. Thirdly, that the deceased at the time of his death should not

Contentious Probate jurisdiction is (1.) Original, or (2.) Derivative.

(1.) Enactments governing original contentious jurisdiction.

Where personalty is under £200, County Court to have jurisdiction.

*The Court of Probate Act, 1858, s. 10.*

(*o*) 21 & 22 Vict. c. 95.  
(*p*) 39 L. J. P. & M. 80.

be seised or beneficially entitled to any real estate of the value of £300 or upwards." Where, therefore, the deceased was entitled to real estate of the value of £300, although the persons interested in the realty had not been cited, and the probate therefore would not affect the real estate, it was held that the County Court had no jurisdiction (*q*). In estimating the value of the real estate to which a deceased was entitled at the time of his death for the purpose of deciding whether the County Court has jurisdiction, charges upon such estate cannot be taken in consideration (*r*). If the estate be of the value of £300, but the value of the deceased's interest in it is reduced by mortgage to less than £300, the County Court has no jurisdiction (*s*).

*The Court  
of Probate  
Act, 1857,  
s. 57.*

"The affidavit as to the place of abode and state of the property of a testator or intestate which is to give contentious jurisdiction to the Judge of a County Court under the previous provisions shall, except as hereinafter provided, be conclusive for the purpose of authorising the exercise of such jurisdiction, and the grant or revocation of probate or administration in compliance with the decree of such Judge; and no such grant of probate or administration shall be liable to be recalled, revoked, or otherwise impeached by reason that the testator or intestate had no fixed place of abode within the jurisdiction of such Judge or within any of the said districts at the time of his death, or by reason that the personal estate sworn to be under the value of two hundred pounds did in fact amount to or exceed that value, or that the value of the real estate of or to which the deceased was seised or entitled beneficially at the time of his death amounted to or exceeded three hundred pounds: Provided, that where it shall be shown to the Judge of a County Court

in probate matters is not *exclusive* (t). But, in every case, proceedings may be commenced in the Probate Division of the High Court, though, it will be seen (u), that the latter Court may remit to a County Court probate causes which might originally have been commenced therein (x).

It is to be noticed that section 10 of "The Probate Act, 1858," confers upon the County Courts, in specified cases, "*the contentious jurisdiction and authority of the Court of Probate in respect of questions as to the grant and revocation of probate of the will or letters of administration of the effects of such deceased person, in case there be any contention in relation thereto.*"

Now the "*contentious jurisdiction*" of the Court of Probate (i. e., the Probate Division of the High Court) consists of whatever does not come under the denomination of "Common Form Business." And what is comprised under the term "Common Form" is defined by the interpretation clause of "The Probate Court Act, 1857," which has already been set out (y).

Secondly, it remains to consider the *derivative* jurisdiction of the County Court in contentious probate matters.

Such jurisdiction is conferred by a section of "The Court of Probate Act, 1857," which provides as follows :—

"It shall not be obligatory on any person to apply for probate or administration to any district registry, or through any County Court, but in every case such application may be made through the principal Registry of the Court of Probate wherever the testator or intestate may at the time of his death have had his fixed place of abode : Provided, that where in any contentious matter arising out of any such application it is shown to the Court of Probate that the state of the property and place of abode of the deceased were such as to give contentious jurisdiction to the Judge of a County Court, the Court of Probate may send the cause to such County Court, and the Judge thereof shall proceed therein as if such application and cause had been made to and arisen in his Court in the first instance."—20 & 21 Vict. c. 77, s. 59.

This section, it is to be noticed, only applies to applications for *grants* of probate or administration, and does not extend to applications for the *revocation* of a grant of probate or administration. Its scope has, however, been extended by the following section of "The Court of Probate Act, 1858" :—

"The said Court of Probate Act, section fifty-nine, shall, so far as the County Courts or a Judge thereof are concerned,

jurisdiction of County Courts is not exclusive, but concurrent.

The contentious jurisdiction of the Probate Division of High Court is conferred on the County Courts within certain limits. Definition of the contentious jurisdiction of Probate Division.

What it includes and excludes.

(2.) Enactments conferring a derivative Probate jurisdiction.

*The Court of Probate Act, 1857, s. 59.*

(t) 20 & 21 Vict. c. 77, s. 59, *infra*.

(u) *Infra*.

(x) 20 & 21 Vict. c. 77, s. 59; and 21 & 22 Vict. c. 95, s. 12, *infra*.

(y) See *ante*, pp. 846, 847.

*The Court of Probate Act, 1858, s. 12.*

Probate Court before remitting action will receive evidence as to the amount of the property.

And may order a trial in the County Court, although all parties desire it to be at Assizes.

Issue of notice to plaintiff and defendant where probate cause is remitted to a County Court. Notice of probate action having been remitted to County Court to be sent by registrar to plaintiff and defendant.

“ apply to an application for the revocation of a grant of probate or administration as well as to an application for any such grant.”—21 & 22 Vict. c. 95, s. 12.

Where proceedings have been commenced in the Probate Division, such Divisional Court will receive evidence from both sides as to the state of the property and the place of abode of the deceased, before it determines whether or not it will send the cause to the proper County Court (*z*).

Where, in a probate cause, the County Court has jurisdiction, the Probate Division may, though application be made on behalf of all the parties to the cause for it to be tried at the Assizes, still, in its discretion, direct it to be tried in the County Court (*a*).

When a probate cause is remitted to the County Court, the Registrar issues a notice both to the plaintiff and defendant in pursuance of the following rule of “The Court of Probate Rules, 1858” :—

“ Where application for probate or letters of administration has been made at the principal Registry, and any contentious matters shall arise out of such application, and the Judge of the Court of Probate shall send the cause to a County Court, the Registrar on receipt of such cause shall forthwith issue a notice according to form (B.) in the Schedule (*b*), both to the plaintiff and defendant, without any application being made to the Court by the plaintiff.”—County Court Probate Rules, Rule 11.

After a testamentary cause has been transferred from the Probate Division of the High Court to a County Court, the Probate Division has no power to make an order as to the costs incurred before the transfer (*c*). But the Judge of the County Court has power to make an order as to such costs (*c*). It will



action remitted to the County Court, after the action has been so remitted, may be said to be identically the same as in actions originally commenced in the County Court. Such being the case, no further portion of the present chapter will be devoted to the separate consideration of probate actions remitted to the County Court under the powers above set out. The practitioner in the conduct of such actions after their transfer must be guided by the directions as to practice contained in the next section of this chapter.

After transfer of a probate action to County Court, practice the same as if action commenced in County Court.

### SECTION III.—THE PRACTICE OF THE COUNTY COURTS IN PROBATE ACTIONS.

In the preceding sections of this chapter we have discussed both the constitution of the County Courts as local Courts of Probate, and also the jurisdiction of such Courts in *contentious* probate matters. It remains in the present section to consider the practice of the County Courts in probate actions.

Practice in probate actions.

Such practice is, it will be recollected, prescribed to a considerable extent by "The County Court Probate Rules," to which reference has been already made in the preceding section of the present chapter (*f*).

Practice governed by County Court Probate Rules:—supplemented by the Probate Court Rules, and the County Court Rules.

The provisions of "The County Court Probate Rules" by no means embrace, however, every detail of practice which may arise. It is accordingly directed, by provisions which have already been set out (*g*), that these rules shall be supplemented by "The Rules of the Court of Probate" and also by the ordinary "County Court Rules." In the following pages it will not be attempted to set out all "The Rules of the Court of Probate" which, under the extensive general reference contained in "The County Court Probate Rules," may possibly be considered as incorporated into the practice. For these, reference must be made to some work on probate practice. All that can be attempted will be to state those portions of the practice which more immediately concern, or are peculiar to, probate actions in the County Court.

Let us proceed to deal with the matters of practice in detail.

(1.) As regards the parties to probate actions in the County Courts, "The Court of Probate Act, 1857," provides as follows:—

(1.) Parties to contentious proceedings. Heir-at-law, devisees, and other interested parties

"Where proceedings are taken under this Act for proving a will in solemn form, or for revoking the probate of a will, on the ground of the invalidity thereof, or where in any other contentious cause or matter under this Act the validity of a will is disputed, unless in the several cases aforesaid the will

(*f*) See *supra*, pp. 851, 852.

(*g*) See *supra*, p. 852.

to be cited, and permitted to become parties, except where will in dispute concerns personalty only.

*The Probate Court Act, 1857, s. 61.*

Heir in certain cases not to be cited, and where not cited, not to be affected by probates.

*The Court of Probate Act, 1857, s. 63.*

Persons who have lodged caveats to be

“ affects only personal estate, the heir-at-law, devisees, and other  
 “ persons having or pretending interest in the real estate affected  
 “ by the will shall, subject to the provisions of this Act, and to  
 “ the Rules and Orders under this Act, be cited to see proceed-  
 “ ings, or otherwise summoned in like manner as the next-of-  
 “ kin or others having or pretending interest in the personal  
 “ estate affected by a will should be cited or summoned, and  
 “ may be permitted to become parties, or intervene for their  
 “ respective interests in such real estate, subject to such Rules  
 “ and Orders, and to the discretion of the Court.”—20 & 21  
 Vict. c. 77, s. 61.

“ Nothing herein contained shall make it necessary to cite  
 “ the heir-at-law or other persons having or pretending interest  
 “ in the real estate of a deceased person, unless it is shown to  
 “ the Court and the Court is satisfied that the deceased was at  
 “ the time of his decease seised of or entitled to or had power to  
 “ appoint by will some real estate beneficially, or in any case  
 “ where the will propounded or of which the validity is in ques-  
 “ tion would not in the opinion of the Court, though established  
 “ as to personalty, affect real estate, but in every such case, and  
 “ in any other case in which the Court may, with reference to  
 “ the circumstances of the property of the deceased or other-  
 “ wise, think fit, the Court may proceed without citing the heir  
 “ or other persons interested in real estate ; provided that the  
 “ probate, decree, or order of the Court shall not in any case  
 “ affect the heir or any person in respect of his interest in real  
 “ estate, unless such heir or person has been cited or made  
 “ party to the proceedings, or derives title under or through a  
 “ person so cited or made party.”—20 & 21 Vict. c. 77, s. 63.

The above statutory provisions have been supplemented and added to by “The County Court Probate Rules 1858” which

that “the Judge of the County Court having jurisdiction in the place in which the deceased had at the time of his or her death a fixed place of abode,” shall have the contentious jurisdiction of the Court of Probate in respect of the matters named in the Act.

*The Probate Court Act, 1858, s. 10.*

(3.) We will deal with the mode of instituting contentious probate proceedings.

This practice is indicated by “The Probate Rules, 1858,” which provide as follows:—

“Any person desirous of taking proceedings in any County Court under the statute 20 & 21 Vict. c. 77 (*i*), for amending the law relating to probates and letters of administration in England, shall lodge with the Registrar of the Court having jurisdiction in the matter an application in writing according to Form (A.) annexed (*k*), duly stamped with the proper duty thereon.”—County Court Probate Rules, r. 1.

(3.) Institution of contentious probate proceedings. Application to be filed. County Court Probate Rules, rule 1.

The form of application is given below (*k*).

“Where an application shall be made to a County Court for the grant or revocation of probate or letters of administration, the person making the application shall produce to the registrar a certified copy of the affidavit made by the party who shall have applied for or obtained the probate or letters of administration: and thereupon, if according to the statements in the affidavit, the deceased had administration: and thereupon, if according to the statements in the affidavit, the deceased had at the time of his death, his fixed place of abode within the district of such Court, and the state of the property of the testator or intestate was such as to give jurisdiction to the Judge of the County Court, the registrar shall issue a notice to the defendant according to Form (B.) annexed (*l*), and deliver a notice according to such form then and

Form of. Where revocation of probate sought, the affidavit used for probate to be produced, and a notice issued to executor, &c. County Court Probate Rules, rule 4.

(*g*) This Rule, it is presumed, applies equally to proceedings under 21 & 22 Vict. c. 95, s. 10, which is substituted for 20 & 21 Vict. c. 77, s. 54.

(*k*) The Form of Application (Form A in the Schedule to the County Court Probate Rules) is as follows:—

I, A. B., of [or, C. D., proctor, solicitor, or attorney, of A. B., of] do hereby apply to the Judge of the above Court for a decree to be made by him according to the provisions of the above Act, for the grant [or, revocation] of probate of the will [or, letters of administration in the goods], of [here insert name and address of testator or intestate]; and I hereby state that the person who has applied for probate or letters of administration [or, who has obtained probate or letters of administration, or is the party against whom this application is made], is E. F. of

A. B. [or, C. D., proctor, solicitor, or attorney, of A. B., of]

(*l*) The Form of the notice in question (Form B. in the Appendix to the County Court Probate Rules) is as under:—

(Seal).

In the County Court of . . . , holden at  
Between A. B. . . . Plaintiff [Address],

C. D. . . . Defendant [Address].

Take notice that at a County Court to be holden at . . . , on the

Form of  
notice.

Issue of  
notice.

County  
Court Pro-  
bate Rules,  
rule 5.

Service of  
notice.

County  
Court Pro-  
bate Rules,  
rule 6.

Notice also  
to be given  
to District  
Registrar of  
the Probate  
Court.

County  
Court Pro-  
bate Rules,  
rule 7.

"there to the plaintiff or his agent."—County Court Probate Rules, r. 4.

The form of the notice which the above rule prescribes is in the foot-note below (*ll*).

"The above-mentioned notice shall be issued ten clear days before the day on which the Judge shall proceed to make a decree in the matter."—County Court Probate Rules, r. 5.

"Notice shall be served by a bailiff of the Court, by his delivering the same to some person at the respective places of residence of the parties as mentioned in the application for proceedings to be taken."—County Court Probate Rules, r. 6.

"The registrar of the County Court at the time that he issues the notices in proceedings for the revocation of the grant of probate or letters of administration shall give notice by post, according to Form (C.) annexed (*m*), to the district registrar by whom the probate or letters of administration has been granted, to produce the original will or other necessary documents at the County Court at which the matter of application will be considered."—County Court Probate Rules, r. 7.

It is to be noticed that the last cited rule provides for the production of the original will and other necessary documents

day of \_\_\_\_\_, at the hour of \_\_\_\_\_, in the \_\_\_\_\_ noon, the Judge of this Court will proceed to make a decree for the grant [*or*, revocation] of probate of the will [*or*, letters of administration in the goods], of [*here insert name and address of testator or intestate*], unless cause be then shown to the contrary; and you are hereby informed that, if you do not attend on that day, the Judge may proceed to make such decree in your absence.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

To the plaintiff [*or*, defendant].

Registrar of this Court.

by the *district registrar*. The production of documents by *witnesses generally* will be dealt with later on (*n*).

(4.) In the next place, it is necessary to consider the various interlocutory applications which may be made in a probate action.

(4.) Interlocutory applications.

The ordinary "County Court Rules" being, as we have seen (*o*), expressly made applicable to probate actions pending in the County Court, it would appear to follow that any application which may be made in an ordinary action will, if proper grounds for it be shown, also be entertained in a probate action. For the details and the practice of such applications, reference must be made to previous pages of this work (*p*).

Any application which may be made in ordinary action may be granted in a probate action.

There appears, however, to be four applications which are especially applicable to probate actions. These are:—(*a*.) Applications as to the custody and preservation of testamentary papers; (*b*.) Applications for the appointment of an administrator *pendente lite*; (*c*.) Applications for directions as to the mode of trial; and (*d*.) Applications for the examination of witnesses abroad. Each of these four applications requires to be dealt with and considered.

Four applications peculiar to probate actions.

(*a*.) The Probate Division of the High Court has power to order the production of any instrument purporting to be testamentary, and to direct the examination of any person having knowledge of any such instrument, whether any suit or other proceeding shall or shall not be pending in the Court with respect to any probate or administration (*q*). It is presumed that, having regard to the powers conferred upon the County Courts by section 10 of "The Court of Probate Act, 1858" (*r*), a similar power is possessed by the County Courts where the application for production of a testamentary instrument is made *pendente lite*. The enactment in question is contained in "The Court of Probate Act, 1857," and is as follows:—

(*a*.) Applications as to the custody, or the production of testamentary papers.

"The Court of Probate may, on motion or petition, or otherwise, in a summary way, whether any suit or other proceeding shall or shall not be pending in the Court with respect to any probate or administration, order any person to produce and bring into the principal or any district registry, or otherwise as the Court may direct, any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person; and if it be not shown that any such paper or writing is in the possession or under the control of such person, but it shall appear that there are reasonable grounds for believing that he has the knowledge of any such paper or writing, the Court may direct

The Court may direct the production of testamentary papers, and, in order to ascertain who has them, may administer interrogatories.

(*n*) *Post*, p. 864.

(*o*) See *ante*, p. 852.

(*p*) *Ante*, Book II. p. 344—420.

(*q*) 20 & 21 Vict. c. 77, s. 26, *infra*.

(*r*) *Ante*, p. 855.

*The Court  
of Probate  
Act, 1857,  
s. 26.*

“such person to attend for the purpose of being examined in open Court, or upon interrogatories respecting the same, and such person shall be bound to answer such questions or interrogatories, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering such questions or interrogatories, or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit in the Court and had made such default ; and the costs of any such motion, petition, or other proceeding shall be in the discretion of the Court.”—20 & 21 Vict. c. 77, s. 26.

The production of testamentary papers is still further facilitated by giving to the registrar of the Probate Division power to issue a *subpœna* requiring any person to produce any testamentary paper or writing which may be shown to be “*in the possession, within the power, or under the control of such person.*” On this subject, “The Court of Probate Act, 1858,” provides as follows :—

The produc-  
tion of tes-  
tamentary  
papers also  
obtainable by  
issue of sub-  
pœna duces  
tecum.

*The Court  
of Probate  
Act, 1858,  
s. 23.*

“It shall be lawful for a registrar of the principal registry of the Court of Probate, and whether any suit or other proceeding shall or shall not be pending in the said Court, to issue a subpœna requiring any person to produce and bring into the principal or any district registry, or otherwise, as in the said subpœna may be directed, any paper or writing being or purporting to be testamentary, which may be shown to be in the possession, within the power, or under the control of such person ; and such person, upon being duly served with the said subpœna, shall be bound to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default, as if he had been a party to a

"deceased person, or for obtaining, recalling, or revoking any probate or any grant of administration, the Court of Probate may appoint an administrator of the personal estate of such deceased person; and the administrator so appointed shall have all the rights and powers of a general administrator, other than the right of distributing the residue of such personal estate; and every such administrator shall be subject to the immediate control of the Court, and act under its direction."—20 & 21 Vict. c. 77, s. 70.

"It shall be lawful for the Court of Probate to appoint any administrator appointed as aforesaid or any other person to be receiver of the real estate of any deceased person pending any suit in the Court touching the validity of any will of such deceased person by which his real estate may be affected, and such receiver shall have such power to receive all rents and profits of such real estate, and such powers of letting and managing such real estate, as the Court may direct."—20 & 21 Vict. c. 77, s. 71.

"The Court of Probate may direct the administrators and receivers appointed pending suits involving matters and causes testamentary shall receive out of the personal and real estate of the deceased such reasonable remuneration as the Court think fit."—20 & 21 Vict. c. 77, s. 72.

(c.) Applications as to the mode of trial should be made to the County Court, whether the probate action was originally commenced therein or only remitted thereto by the Probate Division of the High Court (s).

"The Court of Probate Act, 1857," provides as follows :—

"It shall be lawful for the Court of Probate to cause any question of fact arising in any suit or proceeding under this Act to be tried by a special or common jury before the Court itself, or by means of an issue to be directed to any of the Superior Courts of common law, in the same manner as an issue may now be directed by the Court of Chancery, and such question shall be so tried by a jury in any case where an heir-at-law, cited or otherwise made party to the suit or proceeding, makes application to the Court of Probate for that purpose; and in any other case where all the parties to the suit or proceeding concur in such an application, and where any party or parties other than such heir-at-law make a like application (the other party or parties not concurring therein), and the Court shall refuse to cause such question to be tried by a jury, such refusal of the Court shall be subject to appeal as herein provided."—20 & 21 Vict. c. 77, s. 35 (t).

(d.) When witnesses are abroad or unable to attend at the hearing, application should be made to the County Court to

of administrator *pendente lite*.

His rights and powers.

*The Court of Probate Act, 1857, s. 70.*

Such administrator may also be appointed receiver of real estate.

*The Court of Probate Act, 1857, s. 71.*

Remuneration of administrators and receivers.

*The Court of Probate Act, 1857, s. 72.*

(c.) Applications as to mode of trial.

Court may direct question of fact to be tried by jury or before itself, or by issue directed to High Court. Heir-at-law entitled to jury as of right. In other cases, trial by jury will be conceded if all parties agree. *The Court of Probate Act, 1857, s. 35.*

(s) *Norris v. Allen*, 32 L. J. N. S. P. & M. 3; 2 S. & T. 601.

(t) In cases where a trial by jury is directed under the above section the issues for trial must be settled as directed below.

(d.) Appointment of commission for examination of witnesses who are abroad.

Witnesses who cannot attend in Court to be examined by commission.

*The Court of Probate Act, 1857. s. 32.*

issue a commission under the following section of "The Court of Probate Act, 1857 :"—

" Provided, that where a witness in any such matter (*u*) is " out of the jurisdiction of the Court, or where, by reason of " his illness or otherwise, the Court shall not think fit to en- " force the attendance of the witness in open Court, it shall be " lawful for the Court to order a commission to issue for the " examination of such witness on oath, upon interrogatories " or otherwise, or if the witness be within the jurisdiction of " the Court to order the examination of such witness on oath, " upon interrogatories or otherwise, before any officer of the " said Court, or other person to be named in such order for the " purpose ; and all the powers given to the Courts of law at " Westminster by the Acts of the thirteenth year of King George " the Third, chapter sixty-three, and of the first year of King " William the Fourth, chapter twenty-two, for enabling the " Courts of law at Westminster to issue commissions and give " orders for the examination of witnesses in actions depending " in such Courts, and to enforce such examination, and all the " provisions of the said Acts, and of any other Acts for en- " forcing or otherwise applicable to such examination, and the " witnesses examined, shall extend and be applicable to the said " Court of Probate and to the examination of witnesses under " the commissions and orders of the said Court, and to the " witnesses examined, as if such Court were one of the Courts " of law at Westminster, and the matter before it were an " action pending in such Court."—20 & 21 Vict. c. 77. s. 32.

(5.) Prepara-  
tions for  
trial.

(5.) As, in the case of ordinary actions, there are various preparations for trial which the practitioner is required to make.

For the practice as to these preparations, and suggestions as to the mode of making them, general reference must be made to



The form of an issue for a jury may be as in the foot-note (y).  
 (b.) Next, it has been seen (z) that applications as to mode of trial may be made to the County Court, and that a trial by jury, or before the Court itself, without a jury, may be directed. Where a trial by the Court and jury is directed, certain steps have to be taken, by way of preparation for such trial, which are sufficiently indicated by the following sections of "The Court of Probate Act, 1857":—

"When the Court shall order a question of fact to be tried before itself by a jury, the Court may make all such rules and orders upon the sheriff or any other person for procuring the attendance of a special or common jury for the trial of such question as may now be made by any of the Superior Courts of Common Law at Westminster, and may also make any other orders which to such Court may seem requisite; and every such jury shall consist of persons possessing the qualifications, and shall be struck, summoned, balloted for, and called in like manner as if such jury were a jury for the trial of any cause in any of the said Superior Courts; and every jurymen so summoned shall be entitled to the same rights, and subject to the same duties and liabilities, as if he had been duly summoned for the trial of any such cause in any of the said Superior Courts; and every party to any such proceeding shall be entitled to the same rights as to challenge and otherwise as if he were a party to any such cause; and generally for all purposes of or auxiliary to the trial of questions of fact by a jury before the Court itself, and in respect of new trials thereof, and also for all purposes in relation to or consequential upon the direction of issues, the Court of Probate shall have the same jurisdiction, powers, and authority in all respects as belong to any Superior Court of Common Law, or to any Judge thereof, or to the High Court of Chancery, or any Judge thereof, for the like purposes."—20 & 21 Vict. c. 77, s. 36.

(c.) Thirdly, as to procuring the attendance of witnesses, "The Court of Probate Act, 1857," provides as follows:—

"The Court of Probate may require the attendance of any party in person, or of any person whom it may think fit to examine or cause to be examined in any suit or other proceeding in respect of matters or causes testamentary, and may examine or cause to be examined upon oath or affirmation, as the case may require, parties and witnesses by word of mouth, and may, either before or after or with or without such

Form of issue.

(b.) Proceedings to summon the jury (if one ordered).

Powers of the Court for the trial of question by a jury.

*The Court of Probate Act, 1857,* s. 36.

(c.) Process to procure the attendance of witnesses.

Power to enforce attendance of witnesses, and to direct examination on interrogatories.

(y) In Her Majesty's Court of Probate.

A. B. v. C. D.

Whereas A. B. the [plaintiff or defendant] avers, and C. D. the [defendant or plaintiff] denies that [here set out each question at issue between the parties, and repeat the form as often as may be necessary; and conclude].

Therefore let a jury come.

*The Court  
of Probate  
Act, 1857,  
s. 24.*

“ examination, cause them or any of them to be examined on  
“ interrogatories, or receive their or any of their affidavits or  
“ solemn affirmations, as the case may be ; and the Court may  
“ by writ require such attendance, and order to be produced  
“ before itself or otherwise any deeds, evidences, or writings,  
“ in the same form, or nearly as may be, as that in which a  
“ writ of *subpœna ad testificandum*, or of *subpœna duces tecum*,  
“ is now issued by any of Her Majesty’s Superior Courts of Law  
“ at Westminster ; and every person disobeying any such writ  
“ shall be considered as in contempt of the Court, and also be  
“ liable to forfeit a sum not exceeding one hundred pounds.”—  
20 & 21 Vict. c. 77, s. 24.

The powers conferred by the above section on the Court of Probate, may be exercised by the County Courts, together with the powers expressly conferred upon it by section 25 of the same Act (a).

(d.) Process  
to secure the  
evidence of  
documents.

(d.) Lastly, as regards the evidence of documents, there are certain preparations which require to be made. The Court may order the production before itself or otherwise any deeds, evidences, or writings, by means of a *subpœna duces tecum* (b).

Attendance  
of probate  
officers with  
original bills,  
&c.

And, as we have also seen (c), the registrar of the County Court at the time that he issues the notices in proceedings for the revocation of the grant of probate or letters of administration, shall give notice by post, according to Form (C.), to the district registrar, by whom the probate or letters of administration have been granted, *to produce the original will or other necessary documents at the County Court at which the matter of the application will be considered* (d).

Notices to  
produce and  
admit.

In addition to procuring the attendance of the officers of the Court of Probate with original wills and other documents, the usual notices to produce and admit should be given in a probate

and of the requisite affidavit (*h*), is satisfied that the County Court has jurisdiction, he is to issue a notice to the defendant, and to the plaintiff or his agent, according the Form (B.) (*i*). These notices to the parties are required to be issued ten clear days before the day on which the Judge shall proceed to make a decree in the matter (*i*). In case the parties do not attend at the hearing the Judge may adjourn the case or pronounce a decree in their absence. On this subject "The Probate Rules, 1857," provide as follows:—

"Upon the day mentioned in the notice, the Judge, whether both parties are then before him or not, may proceed to consider the matter of the application, and to make a decree thereon, or he may adjourn the proceedings from time to time as he may think fit."—Court of Probate Rules, r. 9.

At the trial the Judge may adjourn the case if he think fit, under a rule already cited (*k*). He may also stay proceedings, on the ground that the Court has no jurisdiction (*l*). Or he may pronounce a decree.

As regards a stay of proceedings, on the ground of want of jurisdiction, "The Court of Probate Act, 1857," provides that, "Where it shall be shown to the Judge of a County Court that the place of abode and state of the property of a testator or intestate, has not been correctly stated in the prescribed affidavit (*m*), and if correctly stated, would not have authorized him to exercise his contentious jurisdiction, he shall stay all further proceedings in his Court in the matter, leaving any party to apply to the Court of Probate for such grant or revocation, and making such order as to the costs of the proceedings before him as he may think just" (*n*).

As regards the mode of trial, it may take place (*a*.) before Judge alone, or (*b*.) before the Judge and jury.

1.) If the trial takes place before the Judge *alone*, he has the same powers as he would have if he were trying an ordinary case in the County Court. On this subject "The Court of Probate Act, 1857," provides as follows:—

"The Judge of any County Court before whom any disputed question shall be raised relating to matters and causes testatory under this Act shall, subject to the rules and orders hereunder made, have all the jurisdiction, power, and authority to decide the same and enforce judgment therein, and to make orders in relation thereto, as if the same had been an ordinary action in the County Court."—20 & 21 Vict. c. 77,

Judge may dispose of case in absence of parties or adjourn it.

*Court of Probate Rules, rule 9.*

What the Judge may do at the trial with the case.

Stay of proceedings.

Mode of trial.

(a.) Before Judge alone

Powers of Judge at trial.

*The Court of Probate Act, 1857, s. 56.*

Rule 4, *ante*, p. 861; and 21 & 22 Vict. c. 95, s. 10, *ante*, p. 855

Rule 6, *ante*, p. 862.

Rule 9, *supra*.

20 & 21 Vict. c. 77, s. 57, *infra*.

See *ante*, pp. 855, 861, as to this.

20 & 21 Vict. c. 57, s. 57, *ante*, p. 856.

(b.) Trial before Judge and jury.

Evidence at the trial.

Mode of taking evidence in contentious matters.

The Court of Probate Act, 1857, s. 31.

Rules of evidence in Common Law Courts to be observed.

The Court of Probate Act, 1857, s. 33.

Probate or office copy to be evidence of the will

(b.) If the trial takes place before the Judge and jury, he has the same powers, it is presumed, as are conferred upon the Probate Division of the High Court by section 36 of "The Court of Probate Act, 1857" (a).

The following sections of "The Court of Probate Act, 1857," relate to evidence in probate causes:—

"Subject to the regulations to be established by such rules and orders as aforesaid, the witnesses, and where necessary the parties, in all contentious matters where their attendance can be had, shall be examined orally by or before the Judge in open Court: Provided always, that, subject to any such regulations as aforesaid, the parties shall be at liberty to verify their respective cases, in whole or in part, by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, be subject to be cross-examined by or on behalf of such opposite party orally in open Court as aforesaid, and after such cross-examination may be re-examined orally in open Court as aforesaid by or on behalf of the party by whom such affidavit was filed."—20 & 21 Vict. c. 77, s. 31.

"The rules of evidence observed in the Superior Courts of Common Law at Westminster shall be applicable to and observed in the trial of all questions of fact in the Court of Probate."—20 & 21 Vict. c. 77, s. 33.

"In any action at law or suit in equity, where, according to the existing law, it would be necessary to produce and prove an original will in order to establish a devise or other testamentary disposition of or affecting real estate, it shall be lawful for the party intending to establish in proof such devise or other testamentary disposition to give to the opposite party, ten days at least before the trial or other proceeding in which

"original will shall be produced and proved, it shall be lawful for the Court or Judge before whom such evidence shall be given to direct by which of the parties the costs thereof shall be paid."—20 & 21 Vict. c. 77, s. 65.

The Judge has expressly conferred upon him, by an enactment already cited, full power to decide any disputed question which shall be raised relating to matters and causes testamentary and to enforce judgment therein (*p*).

As regards the form of the decree, "The Probate Rules, 1858," provide as follows:—

"The decree shall be according to form (E.) annexed (*g*), and a copy of such decree shall be sent by post to the plaintiff and defendant."—The Court of Probate Rules, Rule 10.

Where the decree of the Court is in favour of the validity of a disputed will, such decree binds the persons interested in the real estate as well as other parties. On this subject "The Court of Probate Act, 1857," provides as follows:—

"Where probate of such will is granted after such proof in solemn form, or where the validity of the will is otherwise declared by the decree or order in such contentious cause or matter as aforesaid, the probate, decree, or order respectively shall enure for the benefit of all persons interested in the real estate affected by such will, and the probate copy of such will, or the letters of administration with such will annexed, or a copy thereof respectively, stamped with the Seal of Her Majesty's Court of Probate, shall in all Courts, and in all suits and proceedings affecting real estate, of whatever tenure (save proceedings by way of appeal under this Act, or for the revocation of such probate or administration), be received as conclusive evidence of the validity and contents of such will, in like manner as a probate is received in evidence in matters relating to the personal estate; and where probate is refused or revoked, on the ground of the invalidity of the

of proof of will.

*The Court of Probate Act, 1857, s. 65.*

Decree.

Form of decree.

Copy of decree to be sent by post to plaintiff and defendant.

*The County Court Probate Rules, rule 10.*

Effect of decree.

Probate copy of will proved in solemn form, or declared valid by Court, to be conclusive evidence of the validity and contents of the original will.

Effect of decree revoking probate is to render the

(*p*) 20 & 21 Vict. c. 77, s. 66; *ante*, p. 869.

(*g*) The form of decree which in accordance with the above Rule is provided in the Appendix to "The County Court Probate Rules" is as follows:—

(Seal.)

In the County Court of . . . , holden at . . .  
Between A. B. . . . Plaintiff,  
and . . .  
C. D. . . . Defendant.

Upon the hearing of the application in this cause, at a Court holden this day, it is decreed as follows:—

[*Here set out the decree.*]  
And it is ordered, that the . . . do pay the sum of . . . for the . . .  
costs, and that the same be paid to the registrar of this Court on the  
day of . . . 18 . . .

Given under the seal of this Court, this . . . day of . . . 18 . . .  
By order of the Court. . . Registrar.

Hours of attendance at the office of the registrar [place of office] from ten till  
four, except on . . . , when the office will be closed at once.

will not receive in evidence except on appeal from such decree.

*The Court of Probate Act, 1857, s. 62.*

Transmission of certificate of decree by registrar.

Certificate of decree for grant or revocation of probate or administration to be transmitted District Registrar.

*The Court of Probate Act, 1857, s. 53.*

Form of certificate.

Plaintiff to deliver it to Registrar, within prescribed time, duly stamped, and if he make

"will, or the invalidity of the will is otherwise declared by  
"decree or order under this Act, such decree or order shall  
"enure for the benefit of the heir-at-law or other persons  
"against whose interest in real estate such will might operate,  
"and such will shall not be received in evidence in any suit or  
"proceeding in relation to real estate, save in any proceeding  
"by way of appeal from such decrees or orders."—20 & 21  
Vict. c. 77, s. 62.

As soon as the decree for the grant or revocation of a probate or administration is made, the Registrar of the County Court must transmit a certificate of such decree to the district Registrar of the Probate Court District in which the testator or intestate was sworn to have his fixed place of abode at the time of his decease, with a view to the subsequent issue of probate or administration. The following section of "The Court of Probate Act, 1857," directs this step to be taken:—

"On a decree being made by a Judge of a County Court for  
"the grant or revocation of a probate or administration in any  
"such cause, the Registrar of the County Court shall transmit to the district Registrar of the district in which it shall  
"have been sworn that the deceased had at the time of his  
"decease his fixed place of abode a certificate under the seal of  
"the County Court of such decree having been made, and  
"thereupon, on the application of the party or parties in favour  
"of whom such decree shall have been made, a probate or administration in compliance with such decree shall be issued  
"from such district Registry; or, as the case may require, the  
"probate or letters of administration theretofore granted shall  
"be recalled or varied by the district Registrar according to  
"the effect of such decree."—20 & 21 Vict. c. 77, s. 55.

On the same subject "The Probate Rules, 1858," provide as follows:—

"The certificate to be given by the Registrar of a County  
"Court under section 55 of 20 & 21 Vict. c. 77 shall be according to form (D.) (r) annexed; and on or before the day  
"mentioned in the notice, the plaintiff shall deliver to the  
"Registrar such form stamped with the proper duty thereon,  
"and the cause shall not proceed until such form duly stamped  
"is so delivered, provided that the defendant may procure and

(r) The following is the Form (Form D.), provided in the Appendix to the County Court Probate Rules:—

(Seal.)

In the County Court of . . . , holden at . . .  
Between A. B. . . . and . . . Plaintiff [address].

C. D. . . . Defendant [address].

I, A. B., registrar of the above Court, do hereby certify that the following decree was made in the above cause.

[Here set out the decree].

Certified under the seal of the Court this . . . day of . . . 18 .  
Registrar of this Court.

"deliver such form duly stamped if the plaintiff shall have neglected to deliver such form so stamped."—County Court Probate Rules, r. 8.

(7.) As regards new trials.

When the trial takes place before a jury, an express power of granting a new trial is conferred on the Court of Probate, and a similar power is, therefore, possessed by the County Court (s).

The application for a new trial in a probate action tried in the County Court should be made to the County Court itself, and not to the Probate Division of the High Court (t).

(8.) An appeal in many cases exists against the decision of a County Court on a point of law given in a probate action in the County Court.

Such right of appeal is conferred by "The Court of Probate Act, 1857," which provides as follows :—

"Any party who shall be dissatisfied with the determination of the Judge of the County Court in point of law, or upon the admission or rejection of any evidence in any matter or cause under this Act, may appeal from the same to the Court of Probate, in such manner and subject to such regulations as may be provided by the Rules and Orders to be made under this Act, and the decision of the Court of Probate on such appeal shall be final."—20 & 21 Vict. c. 77, s. 58.

The Probate Division of the High Court has, as just stated (u), no power to order a new trial of a cause commenced in or transferred to a County Court (x). The only way in which the decree of the Judge of a County Court can be reviewed is by appeal under section 58 of 20 & 21 Vict. c. 77, *on the ground* that the Judge has decided wrongly upon points of *law* or the admission or rejection of evidence (x). Upon questions of *fact*, the decision of the County Court is final (x).

(9.) The taxation and recovery of costs in probate actions in the County Court next calls for notice.

First, as regards the scale of costs which will be allowed.

In pursuance of the powers vested in them by Act of Parliament (y), the County Court Judges, with the approval of the Lord Chancellor, have framed the following order :—

"The same costs and charges as are now paid by counsel and attorney in the County Courts under the provisions of section 33 of the Act 19 & 20 Vict. c. 108, shall be paid to counsel, proctors, solicitors and attorneys in respect of proceedings in the County Courts under the Acts 20 & 21 Vict.

default in this respect, defendant may deliver it.

(7.) New trials.

Power to grant a new trial.

To what Court application should be made.

(8.) Appeals.

Appeal to Probate Division of High Court from decision of County Court Judge on a point of law.

*The Court of Probate Act, 1857, s. 58.*

Decision of County Court Judge can only be reviewed by appeal, and not by grant of new trial. Grounds of appeal.

Decision of County Court Judge on a question of fact is final.

(9.) Taxation and recovery of costs.

On what scale costs are allowed. Order as to costs.

(s) 20 & 21 Vict. c. 77, s. 36.

(t) See *Zealley v. Veryard*, L. R. 1 P. & M. 195; S. C. 35 L. J. N. S. P. & M. 127.

(u) *Supra*.

(x) *Zealley v. Veryard*, L. R. 1 P. & M. 195; S. C. 35 L. J. N. S. P. & M. 127.

(y) 21 & 22 Vict. c. 95, s. 13 (see *ante*, p. 851); and 19 & 20 Vict. c. 108 (*ante*, p. 852).

**Taxation of costs.**

*The Court of Probate Act, 1857, s. 96.*

**(10.) Enforcement of judgments.**

**Powers of County Court Judge to enforce decrees in probate actions.**

“ c. 77, and 21 & 22 Vict. c. 95, except that the fee to counsel and clerk may be a sum not exceeding £5 10s.” (2).

Secondly, with reference to the *taxation* of costs, “The Court of Probate Act, 1857,” enacts as follows :—

“ The bill of any proctor, attorney, or solicitor, for any fees, charges, or disbursements in respect of any business transacted in the Court of Probate, whether contentious or otherwise, or any matters connected therewith, shall, as well between proctor or attorney or solicitor and client, as between party and party, be subject to taxation by any one of the Registrars of the said Court, and the mode in which any such bill shall be referred for taxation, and by whom the costs of taxation shall be paid, shall be regulated by the rules and orders to be made under this Act, and the certificate of the Registrar of the amount at which such bill is taxed shall be subject to appeal to the Judge of the said Court.”—20 & 21 Vict. c. 77, s. 96.

(10.) The mode of enforcing the judgments and orders made by County Courts in probate actions is the only subject which now remains for consideration.

It is sufficient to state here that the County Court possesses the like powers of enforcing all orders, decrees, and judgments made or given by the said Court as are possessed by the Court of Probate under section 25 of “The Court of Probate Act, 1857” (a). Moreover, the same Act, by another section already cited (b), gives the Judge of any County Court before whom any disputed question shall be raised relating to matters and causes testamentary, to decide the same and enforce judgment therein, and to enforce orders in relation thereto, as if the same had been an ordinary action in the County Court (c).



## BOOK IV.

### JURISDICTION AND PROCEEDINGS IN ADMIRALTY AND PROBATE MATTERS.

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#### CHAPTER XI.

##### JURISDICTION AND PRACTICE OF THE COUNTY COURT AS TO OBTAINING GRANTS OF ADMINISTRATION TO SMALL ESTATES OF INTESTATES.

It already has been mentioned (*a*) that the County Courts, in addition to their contentious jurisdiction under the Probate Act (which was considered in the last chapter), now also possess a certain non-contentious jurisdiction in probate matters. This non-contentious jurisdiction is, however, limited to this : that where a person dies intestate and his or her whole property does not exceed £100 in value, the County Court may, if the intestate be a man, obtain letters of administration for his widow or any surviving child, or for any surviving child (though not for a surviving husband), if the intestate be a married woman.

The jurisdiction in question was conferred upon the County Courts by an Act (*b*) which was passed in the year 1873, and which, although it has no formal short title, may be conveniently called "The Intestates' Widows and Children Act, 1873." This Act only provided for the case of *men* dying intestate and possessed of small properties. No provision was made either for the case of *widows* dying intestate leaving small property, or of married women dying similarly possessed of small estate and leaving a husband or children surviving. One of these omitted cases—that of a married woman with small property dying leaving a husband or children is still unprovided for. The other case—that of a married woman, who possesses a small property, dying, leaving a husband or children—has now been provided for by an Act (*c*) passed in the year 1875,

Nature of the County Court jurisdiction as to small estates of intestates.

Provisions of "The Intestates' Widows and Children Acts" of 1873 and 1875.

(*a*) See *Ante*, p. 845.

(*b*) 36 & 37 Vict. c. 52.

(*c*) 38 & 39 Vict. c. 27.

and which (although it, like its predecessor, has no formal short title), may conveniently be called "The Intestates' Widows and Children Act, 1875." The objects and general provisions of these two Acts may be gathered from the preamble and the first section of each of them respectively, which it accordingly will be well here to set out :—

*Intestates'  
Widows and  
Children  
Act, 1873.  
Preamble.  
Id., s. 1.*

"Whereas many poor persons die intestate, possessed of property of small amount, and it is desirable to increase the facilities for taking out letters of administration to their estates and effects, and to reduce the expenses attending the same : Be it therefore enacted, &c.

"Where the whole estate and effects of an intestate shall not exceed in value the sum of one hundred pounds, his widow or any one or more of his children, provided such widow or children respectively shall reside at a distance exceeding three miles from the Registry of the Court of Probate having jurisdiction in the matter, may apply to the Registrar of the County Court within the district of which the intestate had his fixed place of abode at the time of his death, and the said Registrar shall fill up the usual papers required by the Court of Probate to lead to a grant of letters of administration of the estate and effects of the said intestate, and shall swear the applicant and attest the execution of the administration bond according to the practice of the Court of Probate, and shall then transmit the said papers by post to the Registrar of the Court of Probate having jurisdiction in the matter, who shall in due course make out and seal the letters of administration of the estate and effects of the said intestate, and transmit them by post to the said Registrar of the County Court, to be by him delivered to the party so applying for the same without the payment of any fee for the

"shall be entitled to the benefits in that case made and provided by the said Act, and the schedule thereunto annexed."—38 & 39 Vict. c. 27, s. 1.

"This Act shall be read and construed along with and as part of the recited Act."—38 & 39 Vict. c. 27, s. 2.

It will be noticed that by the above sections the jurisdiction created by the Act is given to the Registrar of the County Court and not to the Judge.

Moreover, it also is to be noticed that the jurisdiction given by the Acts is *permissive* only. There is no obligation whatever imposed on any one to resort to it.

To confer jurisdiction under these Acts it is necessary:—*First*, That the whole estate and effects of the intestate shall not exceed in value the sum of £100. *Secondly*, That the application be made by the widow or any one or more of the children of the intestate. *Thirdly*, That such widow or children respectively shall reside at a distance exceeding three miles from the District Registry of the Court of Probate having jurisdiction in the matter. *Fourthly*, That the intestate had his fixed place of abode at the time of his death within the district of the County Court to which application is made.

An application under "The Intestates' Widows and Children Acts of 1873 and 1875," can only be made by the widow or by any one or more of the children of the intestate. No other person can take advantage of the Acts. And (as already pointed out), neither the surviving husband nor the children of a married woman who has died leaving property are within the Acts.

The application must, under either of the above Acts, be made to the Registrar of the County Court District within which the intestate had his or her fixed place of abode at the time of death.

No formal application of any kind is rendered necessary either by the Intestates' Widows and Children Acts themselves or by any rules made under them. And usually the application will be a simple verbal one made to the County Court Registrar by the person wishing for the administration.

The Registrar, on an application being made to him under "The Intestates' Widows and Children Act," possesses a certain discretion as to granting or refusing the application. Such discretion is given to him by the Act. Thus, if the Registrar should think it necessary, he will not assist the applicant to obtain the letters of administration without first requiring proof as to the identity and relationship of the applicant. On this subject the Act provides as follows:—

"The Registrar of the County Court may require such proof as he may think sufficient to establish the identity

*Intestates' Widows and Children Act, 1875, s. 2. Jurisdiction in the Registrar, and is permissive.*

*Requisites to jurisdiction under the Acts.*

*Who may apply under the Acts.*

*In what district application to be made.*

*Mode of application.*

*Proceedings on application.*

*Proof of identity and relationship.*

*Intestate  
Widow and  
Children  
Act, 1872,  
c. 2.*

*Test and  
Inquest &  
Jury  
Act, 1872,  
c. 10.*

*Intestate  
Widow and  
Children  
Act, 1872,  
c. 2.*

*Power of  
Registrar to  
administer  
oaths.*

*Intestate  
Widow and  
Children  
Act, 1872,  
c. 2.*

*Proceedings  
if application  
granted.*

*Papers to be  
filled up.*

"and relinquishing of the applicant."—30 & 37 Vict. c. 52, s. 2.

"If the Registrar of the County Court has reason to believe that the value estate and effects of which the intestate died possessed exceeds a value one hundred pounds, he shall refuse to proceed with the application until he is satisfied as to the real value thereof."—30 & 37 Vict. c. 52, s. 1.

For the purpose of the Act the County Court Registrar has power conferred upon him to administer oaths. He therefore, in considering whether he will or will not accede to an application made to him under the Act, the Registrar desires any of the facts mentioned in the two preceding sections sections 2 and 3 of the Act, to be established by oath, he may administer them in affidavit and himself swear the deponents in such affidavits. The power to administer oaths is conferred by the following section:—

"All registrars of County Courts shall for the purposes of this Act have power and are hereby authorised to administer oaths and to take declarations and affirmations, and to exercise any other powers which can be exercised by Commissioners of the Court of Probate. In the necessary absence of the registrar of the County Court applications may be sworn and execute any necessary documents at the office of the said registrar before any Commissioner of the Court of Probate."—30 & 37 Vict. c. 52, s. 4.

If the application under the Act be granted by the registrar, the Act contains full directions as to the steps which such registrar must proceed to take.

In the first place, the registrar must proceed to prepare and fill up "the usual papers required by the Court of Probate to lead to a grant of letters of administration." No further direc-

The next document which it is required shall be properly prepared is the affidavit of the administrator that he or she will faithfully administer. The form of such affidavit is set out below (e).

Affidavit to truly administer.

The two affidavits, viz., the affidavit for Inland Revenue and the affidavit to faithfully administer, having been duly filled up the County Court Registrar conducting the proceedings must next swear the deponent to each of the affidavits in the usual way. The registrar's authority to swear the affidavit is conferred by section 4 of "The Intestates Widows and Children Act, 1873," which has been already set out (f).

Swearing the affidavits for Inland Revenue and to faithfully administer.

In addition to the affidavit for Inland Revenue and the oath to faithfully administer the estate, it is further necessary that an administration bond should be prepared for execution by the

Administration bond.

he any way died possessed of or entitled to, and for or in respect of which letters of administration are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons and not the affidavit beneficially [if leaseholds, insert, "including the leasehold estate or estates for years of the said deceased, whether absolute or determinable on life or lives"], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information, and belief [if no leaseholds, add "and I lastly make oath that the deceased was not possessed of or entitled to any leasehold estate or estates for years, either absolute or determinable, on life or lives, to the best of my knowledge, information, and belief].

(Signed) C. D.

Sworn at , on the day of , 18 , before me.

(c) The following is the form of oath for an administrator :—

In Her Majesty's High Court of Justice.

Probate, Admiralty, and Divorce Division (Probate).

The District Registry at

In the goods of A. B. deceased.

I, C. D., of [insert the names, residence, and title or addition of deponent], in the county of , make oath and say [or "solemnly, sincerely, and truly declare and affirm," according to the form of words prescribed by the statute applicable to the particular case], that A. B., late of , deceased, died a [widower] and intestate, and that I am the ["lawful widow and relict," or, the natural and lawful and only child, and only next of kin," or one of the natural and lawful children and next of kin] of the said , deceased, and that I will faithfully administer the personal estate and effects of the said deceased by paying his just debts, and distributing the residue of his estate and effects according to law; that I will exhibit a true and perfect inventory of all and singular the said estate and effects, and render a just and true account thereof, whenever required by law so to do; that the said deceased died at , on the day of , 18 ; that at the time of his death the said deceased had a fixed place of abode at , within the district of ; and that the whole of the personal estate and effects of the said deceased does not amount in value to the sum of pounds, to the best of my knowledge, information, and belief.

(Signed) A. B.

Sworn at , on the day of , 18 .  
Before me, K. L.

(f) See *supra*, p. 878.

proposed administrator, and one or more surety or sureties (*g*). The penalty inserted in an administration bond is usually double the amount of the personalty sworn to. In cases where the estate is sworn under £20, it is, however, usual to insert a penalty of £100 (*h*). The form of the bond is in the footnote below (*i*).

Sureties to  
administration  
bond.

It has just been pointed out that a surety or two sureties will be required to the administration bond. And it may be useful to mention here that it is the practice of the Court of Probate not to accept labourers or servants as sureties to an administration bond. But all females, being spinsters or widows, are accepted (*k*).

(*g*) See "The Probate Act, 1857," s. 81.

(*h*) See Coote and Tristram's Probate Practice (6th ed.), at p. 220.

(*i*) Such bond is in the following Form:—

"Know all men by these presents, that we, A. B., of \_\_\_\_\_, C. D., of \_\_\_\_\_, and E. F. of \_\_\_\_\_, are jointly and severally bound unto [G. H.] the President of the Probate, Admiralty, and Divorce Division of Her Majesty's High Court of Justice, in the sum of \_\_\_\_\_ pounds of good and lawful money of Great Britain, to be paid to the said [G. H.], or to the President of the said Division for the time being, for which payment well and truly to be made, we bind ourselves and \_\_\_\_\_ of us for the whole our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals

Dated the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord, 18 \_\_\_\_.

The condition of this obligation is such, that if the above-named A. B. [or K. B., wife of the above-named A. B.], the [here state the character in which the party takes the grant as "lawful widow and relict," &c., following the affidavit to administer], of I. I., late of \_\_\_\_\_, deceased, who died on \_\_\_\_\_ day of \_\_\_\_\_, and the intended administrator of all and singular the personal estate and effects of the said deceased, do, when lawfully called on in that behalf, make, or cause to be made, a true and perfect inventory of all and singular the personal estate and effects of the said deceased, which have, or shall come to \_\_\_\_\_, hands, possession, or knowledge, or into the hands or possession of any other person for \_\_\_\_\_, and the same so made do exhibit, or cause to be exhibited, into the principal registry of the Probate Division of Her

The administration bond must usually bear a stamp. This stamp varies according to the amount named as the penalty of the bond, and is regulated by 55 Geo. III. c. 184, Schedule, part 1, and by 13 & 14 Vict. c. 97, ss. 2 & 3. By these Acts the stamp on any administration bond, the penalty of which does not exceed £100, is 2s. 6d. If the penalty exceeds £100 and is under £200, the stamp is 5s.

Stamp on administration bond.

In some cases, however, administration bonds are exempt from stamp.

Exemptions from stamp duty.

—If estate under £20.

First, in cases where the estate is sworn under £20, although (as we have just seen) it is usual to insert a penalty of £100. Yet, notwithstanding the amount of the penalty, no stamp is affixed upon the bond, as the first of the Acts referred to (viz., 55 Geo. III. c. 184, Schedule, part 1) exempts from duty an "administration bond in England given by any person where the estate to be administered shall not exceed £20 in value."

Next, the same schedule exempts also from duty "administration bonds given by the widow, child, father, mother, brother, or sister of any common seaman, marine, or soldier, who shall be slain or die in the service of his Majesty, his heirs, or successors."

—Or if the deceased were a soldier or sailor dying in the service.

Thirdly, by the 26 & 27 Vict. c. 87, s. 42, it is provided that in all cases "where the whole estate and effects of any deceased depositor (in a savings bank), for or in respect of which letters of administration shall be granted, shall not exceed the value of £50 sterling, no stamp duty shall be chargeable upon the bond required to be given by the administrator, for the due administration of the effects of such deceased depositor," &c.

—Or if the estate consist wholly of a Deposit in a Savings Bank.

But a certificate from the secretary, or some other officer of the savings bank, must be produced with the other papers to entitle the administrator to this privilege.

The book, though made up to the day of the deceased's death, will not be received in lieu of a certificate.

The deceased must be described in the oath as a "depositor in the bank for savings, situate," &c.

As regards the execution of the administration bond, it is to be noted that the County Court Registrar must himself attest it. For rule 38 of "The Probate Rules of 1862," directs that "administration bonds are to be attested by an officer of the principal registry, by a district registrar, or by a commissioner or other person, now or hereafter to be authorised to administer oaths under 20 & 21 Vict. c. 77, and 21 & 22 Vict. c. 95, but in no case are they to be attested by the proctor, solicitor, attorney, or agent of the party who executes them. The signature of the administrator or administratrix to such bonds, if not taken in the principal registry, must be attested by the same person who administers the oath to such administrator or administratrix."

Execution of the administration bond.

Engrossment  
of letters of  
administration.

In addition to the documents already mentioned—viz. the affidavit for Island Revenue, the administrator's oath, and the administration bond, the County Court Registrar also must engross a certain form of letters of administration, engrossed on parchment, and on a proper stamp ready to receive the seal of her Majesty's Court of Probate. The form is in the note below.

Stamp on  
letters of  
administration.

The *ad valorem* stamp on letters of administration is regulated by 35 Geo. III. c. 184, and by 36 & 37 Vict. c. 36. Cases which have come within the cognisance of the County Court, under "The Intestates' Widows and Children Acts," being limited by the Acts to estates where the total value of the whole of the deceased's property does not exceed £100, it is enough to say that the duty on all letters of administration to estates sworn under £100 is 1s. The duty is the same if the deceased were a common seaman, mariner, or soldier dying in the service.

All duties,  
Ac., prescribed  
by Intestates'  
Widows and  
Children  
Act.

It is carefully provided by "The Intestates' Widows and Children Act," that duties, Ac., which would otherwise be payable are not to be deemed taken away by the Act. The enactment to this effect is as follows:—

*Intestates'  
Widows and  
Children  
Act, 1873,  
s. 6.*

"Provided always, that nothing herein contained shall be construed to affect any duty now payable on letters of administration."—36 & 37 Vict. c. 32, s. 6.

*Fees to  
County Court  
Registrar.*

The party applying for administration must, of course, pay the two revenue duties above referred to—viz. the amount of stamp on the administration bond, and the stamp on the letters of administration themselves, at the time of making the application. In addition to these revenue duties, the County Court Registrar is also entitled to certain fees, one half of which goes to the Court of Probate. "The Intestates' Widows and Children Act, 1873," provides for the framing of rules and



“carrying this Act into operation shall be framed, and may from time to time be altered by the Judge of the Court of Probate, subject as regards the tables of fees to the approval of the Commissioners of Her Majesty’s Treasury ; and such proportions of the said fees as the said Judge, with such approval as aforesaid, shall think proper, may be made payable to the registrars of the County Courts acting in the said matters, but the total amount to be charged to applicants shall not in any one case exceed the sums mentioned in the schedule to this Act.”—36 & 37 Vict. c. 52, s. 5.

ceeding those in Schedule to be paid as directed by rules.

*Intestates’ Widows and Children Act, 1873, s. 5.*

#### “ SCHEDULE.

“ Where the whole estate and effects of the intestate shall not exceed in value twenty pounds, the sum of five shillings ; and where the whole estate and effects shall exceed in value twenty pounds, the sum of five shillings, and the further sum of one shilling for every ten pounds or fraction of ten pounds by which the value shall exceed twenty pounds.”

*Intestates’ Widows and Children Act, 1873, Schedule.*

In pursuance of the power given by the above Act, the following rules have been framed as to fees.

#### “ INTESTATES’ WIDOWS AND CHILDREN ACT.

##### “ (*Rules and Orders and Fees under.*)

“ Rules and Orders and Tables of Fees framed in pursuance of the provisions of the Act of 36 & 37 Vict. c. 52 (Intestates’ Widows and Children).

*Rules for, and Table of Fees.*

“ I, the Right Honourable Sir James Hannen, knight, Judge of the Court of Probate, do hereby order and direct that the fees mentioned and set forth in the Table of Fees hereunto annexed, shall, on approval of the Commissioners of her Majesty’s Treasury, be taken for and in respect of all grants of letters of administration made by the Court of Probate by authority of the Act of 36 & 37 Vict. c. 52.

“ And I further order and direct that a moiety of the said fees shall be paid to or retained by the Registrars of the County Court acting in the matter, and the remaining moiety shall be paid to or retained by the Registrars of the Court of Probate, and shall be applied to the purchase of fee stamps denoting the amount, and such fee stamps shall be cancelled and deposited in or transmitted to the principal registry in the same manner as other fee stamps taken in the principal and other registries of the Court.

“ (Signed) JAMES HANNEN.

“ Dated this 8th day of August, 1873.”

“TABLE OF FEES to be taken in the Principal Registry  
“and District Registries of the Court of Probate, and by the  
“Registrars of County Courts, in pursuance of the Act 36 &  
“37 Vict. c. 52.

“Letters of administration of the personal estate of an  
“intestate granted of the Act 36 & 37 Vict. c. 52, when the  
“whole of such personal estate is sworn :—

			s.	d.
“ Not to exceed in value	20 <i>l.</i>	. .	5	0
“ “ “	30 .	. .	6	0
“ “ “	40 .	. .	7	0
“ “ “	50 .	. .	8	0
“ “ “	60 .	. .	9	0
“ “ “	70 .	. .	10	0
“ “ “	80 .	. .	11	0
“ “ “	90 .	. .	12	0
“ “ “	100 .	. .	13	0

“The moiety of the above fees to be paid to or retained by  
“the acting County Court Registrar, and the remaining moiety  
“to be deposited in or remitted to the principal or District  
“Registries of the Court in the form of fee stamps.

“(Signed) JAMES HANNEN.

“Dated this 8th day of August, 1873.

“Approved by the Commissioners of her Majesty’s Treasury,  
“13th August, 1873.”

Transmission  
of the papers  
by County  
Court Registrar

All the documents before referred to, viz., (1.) The oath ;  
(2.) Affidavit for the Inland Revenue; (3.) The bond, and (4.)  
The stamped blank form of letters of administration and such

seals the letters of administration and transmits them by post to the said Registrar of the County Court (*p*).

The County Court Registrar having received the letters of administration, they are delivered by him to the party applying for the same, without the payment of any fee (*p*).

(*p*) 36 & 37 Vict. c. 52, s. 1, *ante*, p. 876.

Transmission  
of adminis-  
tration to  
County Court  
Registrar.

And by  
County Court  
Registrar to  
applicant.

# BOOK V.

## JURISDICTION AND PROCEEDINGS UNDER SPECIAL STATUTES.


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### INTRODUCTORY CHAPTER.

#### GENERAL OUTLINE OF THE JURISDICTION AND PRACTICE UNDER SPECIAL STATUTES.

Varied nature  
of the enact-  
ments con-  
ferring special  
statutory  
jurisdiction  
on the County  
Courts.

IN the previous Books of this work we have considered the practice in the County Courts in all actions of ordinary occurrence, and also the practice in Admiralty actions. And in the next and concluding book the practice of Bankruptcy will be dealt with, being reserved until the conclusion of the work, since, although very important, it is not possessed by *all* County Courts, but only by certain of the larger Courts. In the present Book it is proposed to deal with the practice under the principal (though not under quite all) among the many



for the recovery of such penalties are by action commenced by plaint in the ordinary form, and prosecuted in the same manner as any ordinary action.

The second division of statutes specially relating to County Courts may be said to comprise those statutes which, while not creating penalties, do direct the payment of monies by one person to another, and provide that the monies so made payable may be recovered in the County Court. In this class of case, again, the mode of recovering the monies thus made payable is by an action commenced and prosecuted in the same manner as an ordinary County Court action.

(II.) Statutes providing for the recovery of monies other than penalties.

A third division of statutes is formed by those enactments which make the County Court a portion of special machinery provided by such Acts for the settlement of disputes—as for instance between neighbouring building owners—between agricultural tenants and their landlords—or between workmen and their employers. Under enactments of this description special procedure has, in some instances—as, for example, under the Agricultural Holdings Act—been provided. Where, however, there are no special directions as to procedure it will, it is believed, be found that the most convenient mode will be to proceed by petition.

(III.) Statutes providing for the settlement of disputes.

The fourth division which it is proposed to form, of statutes specially relating to County Courts, embraces all the numerous enactments under which County Courts exercise jurisdiction of an administrative kind. Here, again, it will be found that a petition is the most convenient mode of instituting proceedings—indeed in many instances falling under this division it will be found specially directed that the procedure shall be by way of petition.

(IV.) Statutes conferring administrative jurisdiction.

The fifth and last division of the special statutes relating to County Courts which it will be necessary to deal with consists of certain statutes relating to matters of public concern. The procedure either by action or by petition will be found wholly inapplicable to proceedings of this nature. For the most part, however, the statutes in question will be found themselves to contain directions as to the procedure in each case.

(V.) Statutes relating to matters of public concern.

In many instances the practice under the special statutory jurisdiction—as for example under the Agricultural Holdings Act, and under the Trustee Acts—has been wholly or partially prescribed by rules having special reference to such special statutory jurisdiction. In cases for which no other provision is made the practice is regulated by Order XL., which is the concluding Order coming at the end of the County Court Rules, 1875. This order is as follows:—

General practice in cases under the special statutory jurisdiction.

“Where by any Act not before mentioned in the foregoing rules proceedings are directed to be taken in a County Court such proceedings shall be commenced by plaint or petition ; and the foregoing rules shall apply to such proceedings so far

Order XL.

“as such rules are respectively applicable.”—County Court Rules, 1875, Order XL.

Practice  
twofold.  
(1.) Proceed-  
ings by  
action.

It is now necessary to consider separately, but very briefly, the general nature of the proceedings under the special statutory jurisdiction in each of these two ways.

First as to proceedings by action.

Parties.

The proper parties to the action are, as a rule, only to be ascertained from a careful examination of the statutes under which the action is brought. Before commencing an action under a statute careful references on this point should therefore always be first made to the statute itself. In actions for penalties the statute very commonly states to whom the penalties imposed are to be payable.

Form of par-  
ticulars.

No general form of particulars is provided. The particulars should however be framed as far as possible on the model of the precedents provided for use in other cases. In all cases the particulars should specifically and accurately refer to the statute under which the proceedings are taken. In the case of actions for penalties or monies recoverable by statute a form founded on the count for penalties contained in Buller and Leake's Pleadings is suggested as a guide and is set out in the foot note; with a little variation it can be made applicable to all proceedings for the recovery of money under special statutes (*a*).

Notice before  
action.

In actions under special statutes it is peculiarly needful before commencing the action to ascertain whether any and what notice of action is required. Sufficient instructions on the subject of notice of action generally will be found in the chapter devoted to this subject in a previous portion of the present work (*b*).

The district  
in which to

So, again, as regards the district in which an action founded upon a statute must be brought. If there be no directions in

question, "In what District the Plaintiff must be Entered" (c). But in very many instances—and more especially where penalties are created—it will be found that the statute under which the action is intended to be brought itself directs in what district the proceedings must be.

Where the proceedings are by action, they are commenced, of course, by plaint, and a summons issued and served in the usual way, which has been already fully described in a chapter, to which reference must be made for details (d). In cases where an action is brought for penalties, the sum claimed must be the *exact* amount of the penalty (e).

Mode of  
commencing  
proceedings.

The statute creating the jurisdiction will itself be found, in many cases, to contain directions as to the mode of conducting the defence. Such directions, so far as they are not explicit, may be supplemented by a reference to the chapter on the practice with regard to "The Defendant's Proceedings in Answer to the Action" (f), contained in the portion of this work which relates to the proceedings in ordinary actions (f).

Defendant's  
proceedings  
in answer.

The interlocutory proceedings in an action under a special statute do not call for any special notice, and have already been sufficiently described (g).

Interlocutory  
proceedings.

In passing, it may be specially noted that a person cannot be compelled to answer interrogatories which would expose him to a forfeiture or penalties (h).

—Interroga-  
tories.

The preparations for the trial of an action brought under a special statute, for the most part, differ in no respect from those which (i), as already described, should be made in ordinary actions (i). The only point to be noted is, that the practitioner should carefully consult the statute under which he is proceeding, and take care to place himself in a position to prove with strictness all that the statute renders it needful to prove in actions brought under it.

Preparations  
for trial.

The trial of an action under a special statute is, moreover, conducted in precisely the same mode as any other trial—some general hints as to which have already been given (k). The rule that a witness cannot be compelled to criminate himself (l) is, however, one always to be kept in view in actions upon statutes—more especially where the proceedings are for penalties.

Trial.

(c) *Ante*, Book II. cap. v. p. 263 *et seq.*

(d) See *ante*, Book II. cap. vi. "Of Entering the Plaintiff and Issuing the Summons," p. 279 *et seq.*

(e) Bullen and Leake's Pleading, p. 33.

(f) See *ante*, Book II. cap. viii. p. 315 *et seq.*

(g) See *ante*, Book II. cap. ix. p. 344 *et seq.*, as to "Interlocutory Proceedings in General;" cap. xi. p. 376 *et seq.*, as to "Interlocutory Proceedings in aid of the Action."

(h) See *ante*, pp. 400—1.

(i) See *ante*, Book II. cap. xii. p. 42 *et seq.*

(k) See Book II. cap. xiii. *ante*, p. 444 *et seq.*

(l) As to this rule of law, see *ante*, pp. 467—8.

**New trial.**

A new trial being a matter of mere procedure, it would appear that the Court has power, under the general statutory jurisdiction which it possesses to grant new trials (*m*), to order a new trial in an action under a special statute. The practice on proceedings to obtain a new trial has already been described (*n*). It should, however, be noted that in an action for penalties, a new trial is only granted after a verdict for the plaintiff (*o*) ; it is never given after a verdict for the defendant, except for a mistake of law or a misdirection by the Judge (*p*).

**Appeals.**

In an action under a special statute, it would appear (although the point is, perhaps, open to argument (*q*)), that no appeal lies, save where one is expressly given by the statute under which the proceedings take place. In many instances a statutory right of appeal is expressly given. The practice in cases where an appeal does lie can be ascertained from the chapter dealing with the subject (*r*).

**Costs.**

The costs in actions under special statutes are, again, frequently governed by special provisions in the Acts under which the proceedings are authorised. Subject to such provisions, the practice is the same as in ordinary cases (*s*).

**Enforcement of judgments.**

The decision of the Court on a matter arising under a special statute is, in the absence of any special directions in the statute itself, enforced in the usual manner, which already has been described (*t*).

**(2.) Proceedings by petitioner.**

Secondly, as to proceedings under special statutes by way of petition.

**Parties and district.**

The observations which, in considering the practice in *actions* under the special statutory jurisdiction, have just been made as to the parties to the proceedings and the district in which they should be commenced, are equally applicable to proceedings



form of petition is provided. As a general rule, it will be found that a petition can without difficulty be framed on the model of that referred to in the foot-note (*x*). It should, as a practical point, be noted that petitions under a statute should, in addition to the usual heading, be entitled both in the special matter and also "In the matter of" the Act (as *e.g.*, "In the matter of the 'Trustee Relief Act,' and in the matter of the trusts of the will of John Smith, deceased").

On filing a petition the same fee is payable as on entering a plaint, viz., 1s. in the £, estimated—if the amount cannot be otherwise measured—as on £20 (*y*).

"Petitions shall be filed and shall be delivered at the office of the registrar seven days before the sitting of the Court at which the petition is to be heard or application made."—Order XXXI. r. 16.

"Upon the filing of any such petition, the registrar shall issue the copies under the seal of the Court to the bailiff for service upon the respective persons to whom they are addressed, together with a notice, signed by himself and under the seal of the Court (*z*), informing them of the day and hour on which the petition will be heard, and that if they do not attend, either in person or by their solicitors, such order will be made and proceedings taken as the Judge may think just and expedient."—Order XXXI. r. 17.

The form of a notice under this rule is duly provided (*z*).

"The bailiff of the Court shall, four days at least before the hearing, serve all copies of such petitions and notices."—Order XXXI. r. 18.

Such interlocutory proceedings as may be necessary can, between the filing of the petition and its hearing, be taken in the same manner as in ordinary actions. This has been described in previous pages (*a*). The most usual interlocutory proceedings on matters originated by petition are applications for a receiver (*b*), or for an injunction (*c*), or for the sale of property or its deposit in Court (*d*).

The preparations for the hearing of a petition consist almost entirely in the preparation of affidavits. For, under Order XXXI. rule 19 (which is set out below), in the absence of express directions to the contrary, the evidence at the hearing consists solely of affidavits. The affidavits must be prepared and sworn in the way which has already been described (*e*).

(*x*) Appendix II. Form 302.

(*y*) See Appendix I.

(*z*) Appendix II. Form 303.

(*a*) See *ante*, Book II. cap. ix. p. 344 *et seq.*, as to "Interlocutory Proceedings in General;" and Book II. cap. x. p. 358 *et seq.*, as to "Interlocutory Proceedings to Protect Property or Rights."

(*b*) See the Practice, *ante*, p. 368 *et seq.*

(*c*) See the Practice, *ante*, p. 358 *et seq.*

(*d*) See the Practice, *ante*, p. 372 *et seq.*

(*e*) For the practice as to affidavits, see *ante*, Book II. cap. ix. p. 349 *et seq.*

Fee on filing.

Time of filing petitions.

Order XXXI. rule 16.

Registrar to issue notice of day of hearing of petition.

Order XXXI. rule 17.

Service of petitions and notices.

Order XXXI. rule 18.

Interlocutory proceedings.

Preparations for the hearing.

Notices to produce and to admit may also be given as in ordinary cases (*f*).

Hearing of  
petition.

The petition comes on for hearing upon the day which, as we have seen (*g*), is (under Order XXXI. rule 17 (*g*)) appointed by the registrar for that purpose, when the petition is filed.

Evidence.

The evidence taken at the hearing is regulated by the rule following :—

Order  
XXXI.  
rule 19.

“ Upon the trial of any claim under this order, unless the Judge shall otherwise direct, the facts relied upon in support “ of or in opposition to such claim shall be proved by affidavit.” —Order XXXI. r. 19.

Order.

The drawing up, sealing, and filing of the order made upon the petition is regulated by the following rule :—

Order  
XXXI.  
rule 20.

“ Where the Judge makes an order upon such petition, the registrar shall, as soon thereafter as conveniently may be, “ draw up, seal, and file such order.”—Order XXXI. r. 20.

Proceedings  
in Chambers.

Matters commenced by petition usually involve proceedings in Chambers, consequent upon the order made upon the petition. For the mode of taking such proceedings, reference must be made to the chapter in which the practice has already been fully described (*h*).

Enforcement  
of orders.

Orders made upon a petition may be enforced, and the payment of any costs directed to be paid may be compelled, in any of the ways mentioned in the chapter contained in the Book treating of ordinary actions as to “The Enforcement and Execution of Judgments” (*i*).

(*f*) As to these see *ante*, Book II. cap. xii. p. 435 *et seq.*

(*g*) *Supra*, p. 891.

(*h*) See *ante*, Book II. cap. ix. p. 344 *et seq.*

(*i*) See *ante*, Book II. cap. xix. p. 586 *et seq.*

## BOOK V.—DIVISION I.

### PROCEEDINGS UNDER SPECIAL STATUTES RELATING TO PENALTIES AND FORFEITURES.

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FOLLOWING the division indicated in the introductory chapter of this Book (*a*), the first division of special statutes under which the County Courts exercise jurisdiction will include the principal among that group of statutes under the provisions of which proceedings may be taken for the recovery of penalties or damages specially made recoverable.

Subject matter of the statutes included in this division.

This division will include, so far as they are relevant to the jurisdiction of the County Courts, (1.) The Pharmaceutical Act ; (2.) The Alkali Act ; and (3.) The Hosiery Manufactures Act.

List of the statutes.

Although no special provision is made, and therefore by Order XL. of "The County Court Rules, 1875" (*b*), a petition might possibly in some cases lie, yet the proper and most convenient mode of proceeding in all cases falling within this division will be found to be by way of *action*.

Proceedings should be by action.

(*a*) *Supra*, p. 886.  
(*b*) *Supra*, p. 887.

## BOOK V.—DIVISION I.

### PROCEEDINGS UNDER SPECIAL STATUTES RELATING TO THE RECOVERY OF PENALTIES OR DAMAGES.

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#### CHAPTER I.


##### JURISDICTION AND PROCEEDINGS UNDER THE PHARMACEUTICAL ACT.

Jurisdiction  
of County  
Courts to  
entertain  
actions for  
penalties.

*Pharma-  
ceutical  
Act, 1852,*  
s. 12.

By "The Pharmaceutical Act" (passed in the year 1852) certain penalties are imposed, and jurisdiction to enforce them is conferred upon the County Courts. The following is, so far as it is material, the section of the Act in which these provisions are contained :—

" From and after the passing of this Act, it shall not be  
" lawful for any person, not being duly registered as a pharma-  
" ceutical chemist according to the provisions of this Act, to  
" assume or use the title of pharmaceutical chemist or pharma-  
" centist in any part of Great Britain, or to assume, use, or  
" exhibit any name, title, or sign implying that he is registered  
" under this Act, or that he is a member of the said Society ;



"shall recover his full costs of suit or of such other proceedings."—15 & 16 Vict. c. 56, s. 13.

"All and every sums and sum of money which shall arise from any conviction and recovery of penalties for offences incurred under this Act shall be paid as the Commissioners of Her Majesty's Treasury shall direct."—15 & 16 Vict. c. 56, s. 14.

Application  
of penalties.  
*Pharmaceutical  
Act, 1852,*  
s. 14.

It is to be noticed that in England the County Court has *exclusive* jurisdiction under section 12. Under the prior Act (55 Geo. III. c. 194), the jurisdiction of the County Court was only *concurrent* with any other Court of Record in England or Wales, and it was held that the sum recoverable in the County Court, in respect of penalties under that Act, must not exceed in amount the ordinary limit of the County Court jurisdiction (*a*). Where, however, under the present Act, penalties are incurred to an amount exceeding the present limit of the County Court jurisdiction, it is submitted that they may nevertheless be recovered in the County Court, as it has now *exclusive* jurisdiction in such cases (*b*).

Jurisdiction  
of County  
Courts ex-  
clusive.

The Act points out in terms who are the proper parties to proceed under it.

Parties to the  
proceedings.

The plaintiff, in actions for the recovery of penalties imposed by section 12 of the Act (*c*), is the Registrar, who sues in the name and by the authority of the Council of the Pharmaceutical Society (*d*). The Registrar, it may be mentioned, is appointed by the Council of the Pharmaceutical Society, who have also power to remove him (*e*).

—As plain-  
tiff.

The defendant is the person who unlawfully *assumes, uses, or exhibits* any name, title, or sign implying that he is a person registered under the Act (*f*).

—As defen-  
dant.

Proceedings for penalties should (notwithstanding Order XL. of "The County Court Rules, 1875," (*g*)) be by way of action.

Proceedings  
should be by  
action.

The form of particulars, with the plaint and the mode of conducting an action under this enactment, will be found sufficiently ascertained by reference to the introductory chapter (*h*) of this Book.

Conduct of  
action.

It is to be noticed that, in every action or proceeding for the recovery of penalties under the Act, the party who shall prevail shall recover "*his full costs of suit or of such other proceedings*" (*i*). But with regard to the penalties themselves, the

Costs.

(a) *In re Apothecaries Co. v. Burt*, 5 Exch. 363.

(b) See *ante*, Book I. cap. iii. pp. 125, 126.

(c) *Ante*, p. 894.

(d) 15 & 16 Vict. c. 56, s. 12, *ante*, p. 894.

(e) *Ib.*, s. 4.

(f) *Ib.*, s. 12, *ante*, p. 894.

(g) Set out *ante*, p. 887.

(h) See *ante*, p. 888 *et seq.*

(i) 15 & 16 Vict. c. 56, s. 13, *supra*.

Act provides, by a section already set out (*k*), that “all and  
“every sums and sum of money which shall arise from any  
“recovery of penalties for offences incurred under this Act  
“shall be paid as the Commissioners of the Treasury shall  
“direct” (*l*).

(*k*) *Ante*, p. 895.

(*l*) 15 & 16 Vict. c. 56, s. 14, *ante*, p. 895.

## BOOK V.—DIVISION I.

### PROCEEDINGS UNDER SPECIAL STATUTES RELATING TO THE RECOVERY OF PENALTIES AND FORFEITURES.

#### CHAPTER II.

##### JURISDICTION AND PROCEEDINGS UNDER THE ALKALI ACT, 1863.

"THE Alkali Act, 1863" (26 & 27 Vict. c. 124), was passed in order to secure the more effectual condensation of muriatic acid gas in alkali works. It came into operation on the 1st January, 1864 (*a*), and it was to continue in force until the 1st July, 1868 (*b*). It has, however, now been made perpetual by 31 & 32 Vict. c. 36. The Act provides for the appointment of an inspector to carry out its provisions and prescribes his duties. It also contains various sections, non-compliance with which is made punishable by penalties (*c*). Such sections relate to the conduct of alkali works and the registration of alkali works. And finally the Act makes the penalties created by it recoverable in the County Court, subject to an appeal.

Objects of  
"The Alkali  
Act, 1863."

The first section of the Act is as follows :—

"This Act may be cited as 'The Alkali Act, 1863.'"—26 & 27 Vict. c. 124, s. 1.

Short title.  
*The Alkali  
Act, 1863,*  
s. 1.

"The term 'alkali work,' as hereinafter used, shall mean "every work for the manufacture of alkali, sulphate of soda, or sulphate of potash in which muriatic acid gas is evolved :

Interpretation.

"The term 'owner,' as hereinafter used, shall mean the lessee or occupier or any other person carrying on any alkali work :

"The term 'the inspector' shall mean the inspector to be appointed under this Act."—26 & 27 Vict. c. 124, s. 3.

The appointment and duties of an inspector to carry out the provisions of the Act are provided for in several sections, which are as follow :—

Appointment  
and duties of  
inspector.

"For the purpose of carrying into effect the provisions of

Inspector and

(*a*) Sect. 1.

(*b*) Sect. 2.

(*c*) It may be noted that the Act (s. 13) also enables owners of alkali manufactures to make Special Rules for their workmen with penalties for violation of them. Those penalties for breaches of special rules are, however, made recoverable before *Justices* and not in the County Court.

sub-inspector may be appointed and removed.

*The Alkali Act, 1863,*  
s. 7.

Certain persons disqualified for appointment.

*The Alkali Act, 1863,*  
s. 8.

Duties and powers of inspector.

*The Alkali Act, 1863,*  
s. 9.

“ this Act, the Board of Trade may from time to time appoint  
“ any fit and proper person to be inspector of alkali works  
“ under this Act, and may from time to time remove any  
“ inspector so appointed, and appoint another person in his  
“ place. The Board of Trade may also, on application of the  
“ inspector, from time to time appoint and remove such sub-  
“ inspector or sub-inspectors as the said Board may deem  
“ necessary for the purpose of carrying this Act into effect.  
“ Notice of the appointment of such inspector and sub-in-  
“ spectors shall be published in the *London Gazette*, and a copy  
“ of the *Gazette* shall be evidence of the appointment made.”—  
26 & 27 Vict. c. 124, s. 7.

“ No person either directly or indirectly acting or practising  
“ as a land agent, or directly or indirectly engaged in any  
“ manufacture or interested in any patent in or according to  
“ which the decomposition of salt or the condensation of  
“ muriatic acid gas may be effected, shall act as an inspector or  
“ sub-inspector under this Act.”—26 & 27 Vict. c. 124, s. 8.

The following section of the Act relates to the duties of  
“ inspectors ” :—

“ It shall be the duty of every inspector under this Act to  
“ ascertain from time to time that all the alkali works are  
“ carried on in conformity with the provisions of this Act, and  
“ to enforce the said provisions, and to cause notice to be given  
“ to every owner whose work shall be carried on in contraven-  
“ tion of this Act of the commission of such offence as soon as  
“ conveniently may be after the commission thereof ; and with  
“ a view to the performance of that duty he or any sub-inspec-  
“ tor may at all reasonable times, by day and by night, without  
“ giving previous notice, but so as not to interrupt the process  
“ of the manufacture, enter upon and inspect any alkali work



"inspector all necessary facilities for their entry, examination, and testing."—26 & 27 Vict. c. 124, s. 9.

Provision having thus been made for efficient machinery for the carriage of the Act into operation, it will now be convenient to set out in full, and altogether in one place, the various sections of the Act by which penalties are enforced. They will sufficiently explain themselves, and are as follows :—

Sections of the Alkali Act imposing penalties.

"Every alkali work shall be carried on in such manner as to secure the condensation to the satisfaction of the inspector, derived from his own examination or from that of a sub-inspector, of not less than ninety-five per centum of the muriatic acid gas evolved therein : Provided always, that nothing herein contained shall entitle the inspector to direct any alteration to be made in the process of manufacture or the apparatus used therein.

"If any alkali work is carried on in contravention of this section, the owner of that work shall, on its being made to appear to the Court before which any proceedings for recovery of a penalty may be instituted that ninety-five per centum at least of the muriatic acid gas evolved in such work has not been condensed, be deemed to be guilty of an offence against this Act, and be subject in respect of the first conviction to a penalty not exceeding fifty pounds, and in respect of every offence after a previous conviction to a penalty not exceeding one hundred pounds : Provided always, that no such owner shall be convicted of more than one such offence in respect of any one day : Provided also, that no such penalty shall be inflicted unless the inspector shall produce before the Court having cognizance of the matter a statement in writing of the facts on which he founds his opinion that ninety-five per centum of the muriatic acid gas evolved in the alkali work is not condensed therein, and serve a copy thereof with the process commencing the proceedings."—26 & 27 Vict. c. 124, s. 4.

Penalties on alkali works unless so conducted as to condense ninety-five per cent. of muriatic acid gas evolved.

*The Alkali Act, 1863, s. 4.*

"Every person who wilfully obstructs any inspector or sub-inspector in the execution of this Act, and every owner of any alkali work who refuses or neglects to afford to the inspector or sub-inspector the facilities necessary for making any entry, inspection, examination, or testing under this Act, or who neglects or wilfully violates any provision of this Act, for the neglect or violation of which no other penalty is by this Act imposed, shall be guilty of an offence within the meaning of this Act, and shall for every such offence incur a penalty not exceeding ten pounds."—26 & 27 Vict. c. 124, s. 11.

Penalty on persons obstructing inspector.

*The Alkali Act, 1863, s. 11.*

"No alkali work shall at any time after the expiration of three months after the appointment of the inspector be carried on or prosecuted until such work has been registered by the owner with the inspector. In every register hereby

Penalties on persons carrying on alkali works without

registering  
themselves  
as owners.

*The Alkali  
Act, 1863,*  
s. 6.

Proceedings  
and practice  
for recovering  
of penalties  
in the County  
Court.

*The Alkali  
Act, 1863,*  
s. 14.

“required to be made there shall be inserted the name in full  
“of the owner, and of the parish or township in which the  
“work is situate, and within one month after change of owner-  
“ship in any such work the register of such work shall be  
“amended by inserting the name of the new owner; and if any  
“alkali work is carried on in contravention of this section, the  
“owner thereof shall, on conviction, be deemed to be guilty  
“of an offence against this Act, and shall be subject to a  
“penalty not exceeding five pounds for every day during  
“which such work shall have been so carried on.”—26 & 27  
Vict. c. 124, s. 6.

The penalties created by the sections of the Alkali Act which have just been set out, are by the Act made recoverable in the County Court; and certain provisions are made as to the conduct of the proceedings.

The penalties are, it is to be noted, expressly directed to be sued for by action. The mode of instituting and conducting the action will be found described in the Introductory Chapter to this Book, as supplemented by the following provisions:—

“The following regulations shall be enacted with respect  
“to the recovery in England of penalties for offences other  
“than offences against a special rule:

“Every such penalty shall be recovered by action in the  
“County Court having jurisdiction in the district in  
“which the alkali works are situate in respect of which  
“the penalty arises:

“The action shall be brought, with the sanction of the  
“Board of Trade, by the inspector appointed under this  
“Act, within three months after the commission of the  
“offence, and for the purposes of such action the penalty  
“shall be deemed to be a debt due to such inspector:

“The plaintiff in any action for a penalty under this  
“Act shall be presumed to be the inspector appointed  
“under this Act, until the contrary is proved by the  
“defendant:

“The Court may, upon the application of either party,  
“appoint a person to take down in writing the evidence  
“of the witnesses, and may award to that person such  
“compensation as the Court thinks just:

“The amount of compensation awarded by the Judge  
“shall be deemed to be costs in the cause:

“If either party in any action for a penalty under this  
“Act feels aggrieved by the decision of the Court in point  
“of law, or on the merits, or in respect of the admission  
“or rejection of any evidence, he may appeal from that  
“decision to any of the Superior Courts of Common Law  
“at Westminster:

“The appeal shall be in the form of a special case to  
“be agreed upon by both parties or their attorneys, and

- “ if they cannot agree, to be settled by the Judge of  
 “ the County Court upon the application of the parties  
 “ or their attorneys :  
 “ The Court of Appeal may draw any inferences from the  
 “ facts stated in the case that a jury might draw from  
 “ facts stated by witnesses :  
 “ Subject to the provisions of this section, all the enact-  
 “ ments, rules, and orders relating to proceedings in  
 “ actions in County Courts, and to enforcing judgments  
 “ in County Courts, and appeals from decisions of the  
 “ County Court Judges, and to the conditions of such  
 “ appeals, and to the power of the Superior Courts on  
 “ such appeals, shall apply to an action for a penalty  
 “ under this Act, and to an appeal from such action, in  
 “ the same manner as if such action and appeal related  
 “ to a matter within the ordinary jurisdiction of the  
 “ Court.”—26 & 27 Vict. c. 124, s. 14.  
 “ Within the City of London and the liberties thereof, the  
 “ Sheriffs’ Court, established by a local Act passed in  
 “ the eleventh year of the reign of her present Majesty,  
 “ chapter seventy-one, intituled ‘ An Act for the more  
 “ easy Recovery of Small Debts and Demands within  
 “ the City of London and the liberties thereof,’ shall be  
 “ deemed to be the County Court having jurisdiction in  
 “ the case.”—26 & 27 Vict. c. 124, s. 14.

It will be necessary to mention here one or two matters which relate to the trial of the action, and for which the Act makes provision.

Trial of  
action for  
penalties.

In the first place, it is to be noted that the section (sec. 14) just set out enables the Court, on the application of either party, to appoint a person to take down in writing the evidence of the witnesses and to pay him compensation.

Evidence may  
be taken by a  
writer.

In the next place, at the trial, the owner of any alkali work who is charged with an offence against the Act may escape payment of penalties by proving that the offence alleged against him was in fact committed by some agent, &c., without his knowledge. On this subject “ The Alkali Act, 1863,” provides as follows :—

Owner of a  
factory *prima*  
*facie* liable,  
but may prove  
a servant  
responsible.

“ The owner of any alkali work in which any offence against  
 “ this Act has been proved to have been committed, and for  
 “ which a pecuniary penalty may be imposed, shall in every  
 “ case be deemed to have committed the offence, and shall be  
 “ liable to pay the penalty, unless he shall prove to the satis-  
 “ faction of the Court before which any action shall be brought  
 “ for the recovery of such penalty that he has used due dili-  
 “ gence to comply with and to enforce the execution of this  
 “ Act, and that the offence in question was committed by some  
 “ agent, servant, or workman, whom he shall charge by name  
 “ as the actual offender, without his knowledge, consent, or

*The Alkali*  
*Act, 1863,*  
*s. 5.*

“connivance, in which case such agent, servant, or workman shall be liable to and may be sued for the payment of the penalty, and of the costs of all proceedings which may be taken for the recovery thereof, either against himself or against the owner under this Act: provided that it shall be lawful for the inspector to proceed in the first instance against the person whom he shall believe to be the actual offender, without first proceeding against the owner, in any case in which it shall be made to appear to the satisfaction of such inspector that the owner has used all due diligence to comply with and to enforce the execution of this Act, and that the offence has been committed by the person whom he may charge therewith without the knowledge, consent, or connivance of the owner, and in contravention of his orders.”—26 & 27 Vict. c. 124, s. 5.

#### Appeal.

It will be noticed that section 14 of “The Alkali Act,” which has just been set out, gives a right of appeal to either party and directs that such appeal shall be by special case. But it is apprehended that the appeal may now, under section 6 of “The County Courts Act, 1875” (*f*), be by motion. The practice on the appeal, whether it be made by way of special case or by way of motion, will be found fully described in the chapter on Appeals (*g*).

(*f*) Set out *ante*, p. 574.

(*g*) *Ante*, Book II. cap. xviii. p. 541 *et seq.*

## BOOK V.—DIVISION I.

### PROCEEDINGS UNDER SPECIAL STATUTES RELATING TO PENALTIES AND FORFEITURES.

#### CHAPTER III.

##### JURISDICTION AND PROCEEDINGS UNDER "THE HOSIERY MANUFACTURES (WAGES) ACT, 1874."

"The Hosiery Manufacture (Wages) Act, 1874" (37 & 38 Vict. c. 48), is "An Act to provide for the payment of Wages without Stoppages in the Hosiery Manufacture." It recites, in the Preamble, that "a custom has prevailed among the employers of artificers in the hosiery manufacture of letting out frames and machinery to the artificers employed by them, and it is desirable to prohibit such letting of frames and machinery, and the stoppage of wages for frame rents and charges in the hosiery manufacture." There were also certain "charges" (as they were called in the trade) which had existed before this Act, and which were for "winding," "lighting," "firing," "needles," and "mending" (a). These "charges" appear to be included in the prohibitions contained in the Act. In short it has been judicially stated that "the object of the legislature is to prohibit all such deductions from the workmen's wages, so that he might know what the clear sum was that he was to receive at the week's end without being hampered with the question of frame-rent and other charges" (b).

The enactment in question contains a section which gives a short title to the Act. Such section is as follows:—

"This Act may be cited for all purposes as 'The Hosiery Manufactures (Wages) Act, 1874.'"—37 & 38 Vict. c. 48, s. 9.

The following interpretation clause is also contained in the Act:—

"Within the meaning and for the purposes of this Act, all

Objects of  
"The Hosiery  
Manufactures  
(Wages) Act,  
1874."

Short title.

*The Hosiery  
Manufactures (Wages)  
Act, 1874,*  
s. 9.

Interpretation  
clause.

*The Hosiery*

(a) See *Chasmer v. Cummings*, 8 Q. B. 311, where the nature of these charges is fully explained.

(b) *Per Field, J.*, in *Willis v. Thorp*, L. R. 10 Q. B. 383, p. 388.

*Manufac-  
tures (Wages)*  
*Act, 1874,*  
*s. 7.*

“workmen, labourers, and other persons in any manner engaged  
“in the performance of any employment or operation, of what  
“nature soever, in or about the hosiery manufacture, shall be  
“and be deemed ‘artificers;’ and, within the meaning and for  
“the purposes aforesaid, all masters, foremen, managers, clerks,  
“contractors, sub-contractors, middlemen, and other persons  
“engaged in the hiring, employment, or superintendence of the  
“labour of any such artificers, shall be and be deemed to be  
“‘employers;’ and, within the meaning and for the purposes  
“of this Act, any money or other thing had or contracted to  
“be paid, delivered, or given as a recompense, reward, or re-  
“muneration for any labour done or to be done, whether within  
“a certain time or to a certain amount, or for a time or for an  
“amount uncertain, shall be deemed and taken to be the wages  
“of such labour; and, within the meaning and for the purposes  
“aforesaid, any agreement, understanding, device, contrivance,  
“collusion, or arrangement whatsoever on the subject of wages,  
“whether written or oral, whether direct or indirect, to which  
“the employer and artificers are parties or are assenting, or by  
“which they are mutually bound to each other, or whereby  
“either of them shall have endeavoured to impose an obligation  
“on the other of them, shall be and be deemed a ‘contract.’”—  
37 & 38 Vict. c. 48, s. 7.

Sections  
carrying  
out general  
objects of  
the Act.

*The Hosiery  
Manufac-  
tures (Wages)*  
*Act, 1874,*

The general objects sought to be attained by the Act are, for the most part, contained in the following sections which are therefore set out in full :—

“In all contracts for wages the full and entire amount of all  
“wages the earnings of labour in the hosiery manufacture shall  
“be actually and positively made payable in net, in the current  
“coin of the realm, and not otherwise, without any deduction  
“or stoppage of any description whatever, save and except for

(1.) *First*, as to penalties recoverable from employers in the County Court. The section imposing them, and giving the County Court jurisdiction, is as follows :—

“If any employer shall bargain to deduct, or shall deduct, directly or indirectly, from the wages of any artificer in his employ any part of such wages for frame-rent and standing or other charges, or shall refuse or neglect to pay the same or any part thereof in the current coin of the realm, he shall forfeit a sum of five pounds for every offence, to be recovered by the said artificer or any other person suing for the same in the County Court in the district where the offence is committed, with full cost of suit.”—37 & 38 Vict. c. 48, s. 3.

It has been held that the deduction of *finer* from the wages of an artificer is not within this section (c).

(2.) *Secondly*, as to penalties imposed on artificers and others for using frames or any machine otherwise than for the purpose for which they are lent. The section imposing them, and giving the County Courts jurisdiction, is as follows :—

“If any frame or machine which shall have been entrusted to any artificer or other person by his employer for the purpose of being used in the hosiery manufacture for such employer, or in any process incident to such manufacture, shall, whilst the same shall be so entrusted, be worked, used, or employed without the consent in writing of such employer or other person so entrusting such frame or machine, in the manufacture of any goods or articles whatever for any other person than the person by whom such frame or machine shall have been so entrusted, then and in every such case the artificer or other person to whom the same shall have been so entrusted shall forfeit and pay the sum of ten shillings for every day on any part of which any such frame or machine shall have been so worked, used, or employed, to be recoverable by and for the benefit of the person who shall have so entrusted the same, in the County Court for the district where the offence shall have been committed, with full costs of suit.”—37 & 38 Vict. c. 48, s. 4.

Under each of the above two sections, it would appear that the County Court enjoys an *exclusive* jurisdiction; the penalty being only recoverable in that Court.

The enactment itself contains no express directions as to the mode of recovering penalties. But (notwithstanding that Order XL. (d) of “The County Court Rules, 1875,” allows a petition as well as an action in cases not otherwise provided for by these rules) it is clear that an action commenced by plaintiff and summons is the proper mode of proceeding to recover the penalties created by the Act.

(1.) Penalties on employers not paying artificers in full and in cash.

*The Hosiery Manufactures (Wages) Act, 1874, s. 3.*

(2.) Penalties on workmen improperly using frames for purposes other than those for which they are lent.

*The Hosiery Manufactures (Wages) Act, 1874, s. 4.*

County Court jurisdiction exclusive.

Penalties recoverable by action.

(c) *Willis v. Thorp and another*, L. R. 10 Q. B. 383.

(d) *Set out ante*, p. 887.

**Practice.**

The practice in an action for penalties under this Act, will be found sufficiently indicated by the introductory chapter to this book (e). A suggested form of particulars on the plaint will also be there found (f).

**Appeal.**

Although no right of appeal is expressly given in the Act itself, yet it appears that there is an appeal from the County Court, under "The Hosiery Manufactures (Wages) Act, 1874," to the High Court. An instance of a recent appeal in a case under the Act is cited below (g).

(e) *Ante*, p. 886 *et seq.*

(f) *Ante*, p. 888.

(g) See *Willis v. Thorp and another*, L. R. 10 Q. B. 383.



## BOOK V.—DIVISION II.

### PROCEEDINGS UNDER SPECIAL STATUTES TO RECOVER MONIES OTHER THAN PENALTIES.

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THE second group into which statutes conferring a special jurisdiction upon the County Courts may be divided consists of those statutes which provide for the recovery of monies other than penalties. It is proposed, as in the last division, to deal with these statutes in chronological order. In one case—that of summary proceedings under the Title, Copyhold, and Enfranchisement Acts—the object of the proceedings is not the recovery of money, but to obtain the production of documents. Since, however, the provisions on this subject relate to the same subject-matter, and are contained in the same statute as proceedings taken under the Acts for the recovery of expenses, it will be well to include this matter in the present division of our subject.

Summary of statutes contained in this division.

As in the case of statutes included in the last division and giving actions for penalties, it will be found that, although either proceedings by plaint or by petition may be resorted to, an action commenced and prosecuted in the ordinary way is, in practice, the most convenient mode of proceeding under Acts falling within this division of special statutes.

Proceedings should usually be by action.

## BOOK V.—DIVISION II.

### PROCEEDINGS UNDER SPECIAL STATUTES TO RECOVER MONIES OTHER THAN PENALTIES.

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#### CHAPTER I.

##### ACTIONS TO RECOVER UNDER "THE POOR LAW AMENDMENT ACT, 1848," TO RECOVER LOANS MADE UNDER THE POOR LAW ACTS.

Poor Law  
Acts allow  
relief to be  
given to  
paupers by  
way of loan.

THE general objects and scope of the Poor Law Acts are too well known to need any discussion here. In addition, however, to the relief which may be given to paupers in the ordinary way, provision also is made for such relief being given by way of loan. Such provision was originally contained in the following enactment :—

" Whenever it shall appear to the justices, or to the general  
" or select vestry, or to such guardians, governors or directors  
" as aforesaid, or to the overseers of the poor, to whom appli-  
" cation shall be made for relief for any poor person, that he  
" might, but for his extravagance, neglect, or wilful miscon-  
" duct, have been able to maintain himself, or to support his  
" family (as the case may be), it shall be lawful for the over-  
" seers of the poor (by the direction of the justices, or of the  
" general or select vestry, or of such guardians, governors or  
" directors, where application shall have been made to them



"and upon every default of payment by their warrant to commit such person to the common gaol or house of correction, for any time not exceeding three calendar months, unless the sum and sums which shall be due and payable by virtue of such order shall be sooner paid."—59 Geo. III. c. 12, s. 29.

This enactment has, however, been repealed by the "Statute Law Revision Act, 1873." It is, however, provided by "The Poor Law Amendment Act" as follows:—

"From and after the passing of this Act, any relief or the cost price thereof, which shall be given to or on account of any poor person above the age of twenty-one, or his wife, or any part of his family under the age of sixteen, and which the said commissioners shall by any rule, order, or regulation declare or direct to be given or considered as given by way of loan, and whether any receipt for such relief, or engagement to repay the same, or the cost price thereof, or any part thereof, shall have been given or not by the person to or on account of whom the same shall have been so given, shall be considered, and the same is hereby declared to be a loan for such poor person."—4 & 5 Will. IV. c. 76, s. 58 (aa).

*The Poor Law Amendment Act, s. 58.*

Relief advanced, by way of loan, to paupers, by the guardians of any union, is recoverable in the County Court. On this subject "The Poor Law Amendment Act, 1848," provides as follows:—

"All relief to be granted by the guardians to any pauper upon loan, and which shall be chargeable to the common fund of the union, or to any parish therein, may be recoverable in the County Court or other Court for the recovery of small debts for the district wherein the union or the major part thereof shall be comprised, on the plaint of the said guardians, who may apply and be heard in such Court by any officer appointed by them for such purpose, in manner prescribed by the statutes enabling them to appoint officers to act for them: Provided nevertheless, that the remedy already provided by law for the recovery of the relief granted on loan, shall be in force and applicable to the relief so chargeable to the common fund as aforesaid."—11 & 12 Vict. c. 110, s. 8.

*Relief advanced by way of loan may be recovered in County Court, &c.*  
*The Poor Law Amendment Act, 1848, s. 8.*

The only persons entitled to recover in the County Court against a pauper under section 8 of the Act, are the guardians, who may apply and be heard in such Court by any officer appointed by them for such purpose, in manner prescribed by the statutes enabling them to appoint officers to act for them.

*Parties to proceedings*

Proceedings under this Act are regulated by the ordinary County Court Rules, and may, under Order XL. (a) of "The

*Mode of proceedings.*

(aa) No relief by loan must be given where it is in contravention of the Out-Door Relief Orders, of 21st Dec., 1844, and of the 14th Dec. 1852.

(c) See this Order, set out in full, *ante*, p. 887.

County Court Rules, 1875" (*b*), be either by petition or action. It is, however, almost needless to add that proceedings under this statute are—like other proceedings falling within this division of our subject—most conveniently taken by way of action. The mode of instituting an action will be ascertained from Book II. of this work, and from the further remarks as to actions under special statutes contained in the introductory chapter to the present Book of this work (*c*).

(*b*) 11 & 12 Vict. c. 110, is such an Act.

(*c*) See *ante*, p. 889.

## BOOK V.—DIVISION II.

### PROCEEDINGS UNDER SPECIAL STATUTES TO RECOVER MONIES OTHER THAN PENALTIES.

#### CHAPTER II.

##### PROCEEDINGS FOR DAMAGES UNDER "THE COPYRIGHT OF DESIGNS ACTS."

In the year 1842 an Act of Parliament was passed which has in a subsequent Act (a) since received the name of, and is now commonly called "The Copyright of Designs Act, 1842." The object of this Act was "to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture." The provisions of the Act are far too long for insertion here. But its scheme may, for our present purpose, be briefly described as follows :—

"With regard to any new and original design (except for Sculpture and other things within the provisions of the several Acts, mentioned in the Schedule C to this Act annexed) whether such design be applicable to the ornamenting of any article of manufacture or of any substance artificial or natural, or partly artificial and partly natural, and that whether such design be so applicable for the pattern or for the shape or configuration or for the ornament thereof, or for any two or more of such purposes and by whatever means such designs may be so applicable whether by printing, or by painting, or by embroidery, or by weaving, or by sewing, or by modelling, or by casting, or by embossing, or by engraving, or by staining, or by any other means whatever, manual, mechanical, or chemical, separate or combined : Be it enacted that the proprietor of every such design, not previously published either within the United Kingdom of Great Britain and Ireland or elsewhere, shall have the sole right to apply the same to any articles of manufacture, or to any such substances as aforesaid, for the respective terms hereinafter mentioned ; such respective terms

General provisions of "The Copyright of Designs Acts."

Certain new designs to confer on their owners the sole right of production for certain terms.

*The Copyright of Designs Act, 1842,* s. 3.

(a) *I. e., "The Copyright of Designs Act, 1858,"* 21 & 22 Vict. c. 70.

“ to be computed from the time of such design being registered  
 “ according to this Act.”—5 & 6 Vict. c. 100, s. 3.

Designs to  
 be registered.

Penalties  
 imposed for  
 infringements  
 of designs.

The Act then provides for the registration of designs ; for the transfer of the copyright in designs so registered ; and also, in a section which will be set out in a later part of this chapter, for the giving of a certificate of registration, which is made evidence in all courts. Further, the Act also imposes penalties for infringements of designs and prescribes the proceedings to be taken for the recovery of such penalties. It, in addition, contains the following section as to the right of the proprietor of a registered design to bring an action for damages :—

Action for  
 damages may  
 be brought  
 by proprietor  
 if design  
 infringed.

*The Copy-  
 right of  
 Designs  
 Act, 1842,*  
 s. 9.

“ Provided always, and be it enacted, that, notwithstanding  
 “ the remedies hereby given for the recovery of any such  
 “ penalty as aforesaid, it shall be lawful for the proprietor in  
 “ respect of whose right such penalty shall have been in-  
 “ curred (if he shall elect to do so) to bring such action as he  
 “ may be entitled to for the recovery of any damages which he  
 “ shall have sustained, either by the application of any such  
 “ design or of a fraudulent imitation thereof, for the purpose  
 “ of sale, to any articles of manufacture or substances, or by the  
 “ publication, sale, or exposure to sale as aforesaid, by any  
 “ person, of any article or substance to which such design or  
 “ any fraudulent imitation thereof shall have been so applied,  
 “ such person knowing that the proprietor of such design had  
 “ not given his consent to such application.”—5 & 6 Vict.  
 c. 100, s. 9.

*The Copy-  
 right of  
 Designs  
 Act, 1858.*

In the year 1858 an Act (21 & 22 Vict. c. 70) was passed amending the Act of 1842, and containing, amongst others, the provisions following :—

“ In citing this Act for any purpose whatever it shall be

"section of the Act of the ninth and tenth Victoria, chapter ninety-five, of his intention to rely on such special defence, and shall state in such notice the date of publication and other particulars of any designs whereof prior publication is alleged, or of any objection to such copyright, or to the title of the proprietor to such copyright; and it shall be lawful for the Judge of the County Court, at the instance of the defendant or plaintiff respectively, to require any statement or notice so delivered by the plaintiff or of the defendant respectively to be amended in such manner as the said Judge may think fit."—21 & 22 Vict. c. 70 s. 8.

*Act, 1858, s. 8.*

As regards the parties to the proceedings under the Act, the provisions of the above section are distinct:—

*Parties.*

*The plaintiff* in proceedings under the Act will be "the proprietor of copyright in any design under 'The Copyright of Designs Acts,' or 'The Copyright of Designs Act, 1858' (b).

—As plaintiff.

*The defendant* will be the person who is alleged to have committed the piracy complained of (c).

—As defendant.

Proceedings, under the Act are expressly directed to be "commenced in the County Court of the district within which the piracy is alleged to have been committed" (d).

In what district the proceedings should be taken.

There being no special directions in the County Court rules and orders as to proceedings under the "Copyright of Designs Act," it may be that such proceedings can, under Order XL. of the County Court Rules, 1875 (e), be taken either by petition or by action. But it will be most convenient to proceed by way of action. And obviously this was the mode of proceeding contemplated by the framers of the Act. For "The Copyright of Designs Act, 1858" provides as follows:—

Mode of taking proceedings.

"The provisions of an Act of the ninth and tenth Victoria, chapter ninety-five, and of the twelfth and thirteenth Victoria, chapter one hundred, as to proceedings in any plaint, and as to appeal, and as to writs of prohibition, shall, so far as they are not inconsistent with or repugnant to the provisions of this Act, be applicable to any proceedings for piracy of copyright of designs under the said 'Copyright of Designs Acts,' or this Act." (f)—21 & 22 Vict. c. 70, s. 8.

The usual proceedings of County Courts Acts applicable to proceedings for piracy of designs.

The practice in an action for damages under "The Copyright of Designs Act," is, generally speaking, the same as in an ordinary action, and is described in Book II. of this work, and in the Introductory Chapter to the present Book (g). The following additional points require notice however:—

*The Copyright of Designs Act, 1858, s. 8.*

*Practice.*

Section 8 requires that "*the plaintiff shall deliver with his*

*Plaint.*

(b) 21 & 22 Vict. c. 70, s. 8, *supra*.

(c) *Id.*

(d) See sect. 8, *supra*.

(e) See this Order in full, *ante*, p. 887.

(f) "The Copyright of Designs Act, 1858," is such an Act.

(g) See *ante*, p. 886 *et seq.*

*“plaint a statement of particulars as to the date and title  
“other description of the registration whereof the copyright  
“alleged to be pirated, and as to the alleged piracy” (h). The*  
statement may be amended by the Judge, at the instance of the  
defendant (h).

Defence.

If the defendant, to an action under section 8 of the A  
intends at the trial to rely as a defence on any objection  
plaintiff's copyright, or to the title of the proprietor thereof,  
in, he must give the notice required by section 8. This notice  
is liable to amendment, at the instance of the plaintiff (h).

Evidence at  
trial.

Certificate of  
registration  
of design to  
be evidence.

*The Copy-  
right of  
Designs  
Act, 1842,  
s. 16.*

At the trial of the action it will be necessary for the plaintiff  
to prove two things:—

In the first place, he must prove that he is the owner of  
registered design. On this point the certificate of registration  
is made evidence by the following enactment:—

“And be it enacted, that upon every copy, drawing, or print  
“of an original design so returned to the person registering  
“aforesaid, or attached thereto, and upon every copy, drawing  
“or print thereof received for the purpose of such registration  
“or of the transfer of such design being certified thereon  
“attached thereto, the registrar shall certify under his hand  
“that the design has been so registered, the date of such registration,  
“and the name of the registered proprietor, or the style  
“or title of the firm under which such proprietor may be  
“trading, with his place of abode or place of carrying on his  
“business, or other place of address, and also the number  
“such design, together with such number or letter, or number  
“and letter, and in such form as shall be employed by him  
“to denote or correspond with the date of such registration; and  
“such certificate made on every such original design, or on  
“such copy thereof, and purporting to be signed by the



"ture thereto, or of the seal of office affixed thereto, or of the  
 "person signing the same being the Registrar or Deputy  
 "Registrar."—5 & 6 Vict c. 100, s. 16.

In the second place, the plaintiff must prove that the de- Proof of  
 fendant has pirated the design, his right to which is ascertained piracy.  
 and defined by the certificate.

## BOOK V.—DIVISION II.

### PROCEEDINGS UNDER SPECIAL STATUTES TO RECOVER MONIES OTHER THAN PENALTIES.

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#### CHAPTER III.


##### PROCEEDINGS BY THE TITHE, COPYHOLD, AND INCLOSURE COMMISSIONERS TO RECOVER EXPENSES OR TO ENFORCE THE PRODUCTION OF DOCUMENTS.

Commis-  
sioners under  
Tithe Com-  
mutation  
Acts, Copy-  
hold Acts,  
and Inclosure  
Acts.

FROM time to time various Acts of Parliament have been passed, providing for the commutation of tithes, for the inclosure of common lands, and for the enfranchisement of copyhold estates. All these Acts provided for the appointment of commissioners as the machinery by which their several objects were to be carried into effect. Recent legislation has amalgamated these different commissioners under these various Acts into one body.

Act of 1868  
gives County  
Courts juris-  
diction (1.)

It would be entirely beyond the scope of this work to enter into any detail as to the provisions of the several Acts just mentioned. But under an Act of Parliament (31 & 32 Vict. c. 88) passed in the year 1868 and entitled "An Act to alter



It will be most convenient to devote a separate section to the consideration of each of these two distinct kinds of jurisdiction.

SECTION I.—PROCEEDINGS BY THE TITHE, COPYHOLD, AND INCLOSURE COMMISSIONERS FOR THE RECOVERY OF EXPENSES.

The following section of the Act of 1868, before referred to, confers on the County Courts jurisdiction to enforce the payment of expenses due to the commissioners :—

Jurisdiction of County Courts to enforce payment of commissioners' expenses.

" In all cases in which any dispute as to the expenses incidental to an enfranchisement, or as to the compensation to be paid to the steward, shall be referred to the commissioners for their certificate, the costs incurred by them in ascertaining the same shall be paid to the commissioners, either by the person making such reference or applying for such certificate, or by the person whose costs are so taxed, as the commissioners, by order under their hands and seal, may direct, and such order shall state the amount of such costs ; and the commissioners shall have power, by application to any County Court, to recover the same from the person liable under such order, together with all costs of such application, and such order shall be conclusive evidence of such debt."—31 & 32 Vict. c. 89, s. 3.

The parties to proceedings under the above section will, as plaintiffs, be the commissioners ; as defendants, the persons who, under the order of the commissioners are liable to pay such costs.

Parties.

The section, it will be noted, expressly directs that an application under it may be made to "any County Court." It therefore appears not to be necessary to resort to the County Court of any particular district.

In what district to proceed.

The most convenient mode of proceeding will be by action ; although by Order XL. of the County Court Rules of 1875 (b) they may be either by action or by petition.

Mode of proceedings.

The practice in the proceedings, whether such proceedings be by action or by petition, can be ascertained from the introductory chapter to the present Book (c). The following point, however, requires notice.

Practice.

At the trial of a proceeding in which the commissioners seek to recover their costs, under section 3 of the Act (d), the order under their hands and seals directing payment of costs, is made *conclusive evidence* of such debt (e).

(b) Set out in full, *ante*, p. 887.

(c) See *ante*, pp. 886 *et seq.*

(d) *Supra*.

(e) Sect. 3, *supra*.

Costs.

It will be noted that section 3 of the Act of 1868 gives an express power to the Court to award costs.

SECTION II.—PROCEEDINGS BY THE TITHE, COPYHOLD, AND ENCLOSURE COMMISSIONERS TO COMPEL THE PRODUCTION OF DOCUMENTS.

(2.) Jurisdiction of County Courts to enforce production of documents.

Power to commissioners to enforce production of documents belonging to inclosure.

31 & 32 Vict. c. 89.

The jurisdiction of the County Courts to enforce the production of documents, is conferred by the following section of the Act of 1868 :—

“ In any case in which an inclosure has been authorised by Parliament, and a valuer appointed, it shall be lawful for the commissioners, at any time they shall see occasion, by an order under their hands and seal, to require such valuer, or any other person who shall have charge of or be in possession of any schedule, valuation, plan, report, award, or other document relating to such inclosure, to deliver the same to them at their office ; and in default of such delivery within the time named in such order it shall be lawful for the commissioners to summon such valuer or other person before the Judge of the County Court for the county in which the lands or any part thereof authorised to be inclosed shall be situate ; and the Judge of such Court shall, upon production of the order of the commissioners, give such direction to enforce such order, at the expense of the person neglecting or refusing to obey the same, as he is now by law enabled to give to compel the production of papers and documents before

1875" (*g*), the proceedings may be commenced either by plaint or by petition.

Whichever form of proceeding be resorted to, the practice under it can be ascertained from the introductory chapter (*h*) to the present Book of this work. The following points alone require special notice.

At the trial of a proceeding under section 4 of the Act of 1868, the first thing to be done is to produce the commissioners' order requiring the production of documents (*i*). Thereupon, the County Court Judge must "give such direction to enforce such order at the expense of the person neglecting or refusing to obey the same, as he is now by law enabled to give to compel the production of papers and documents before such Court" (*k*).

The powers of the County Court Judge to compel the production of papers and documents in ordinary cases have already been pointed out in a previous part of this work (*l*).

(*g*) Set out in full, *ante*, p. 887.

(*h*) *Ante*, pp. 886 *et seq.*

(*i*) 31 & 32 Vict. c. 89, s. 4, *ante*, p. 930.

(*k*) *Ib.*

(*l*) Book II. cap. xi. s. 5, pp. 385—394.

## BOOK V.—DIVISION II

### PROCEEDINGS UNDER SPECIAL STATUTES TO RECOVER MONIES OTHER THAN PENALTIES.



#### CHAPTER IV.

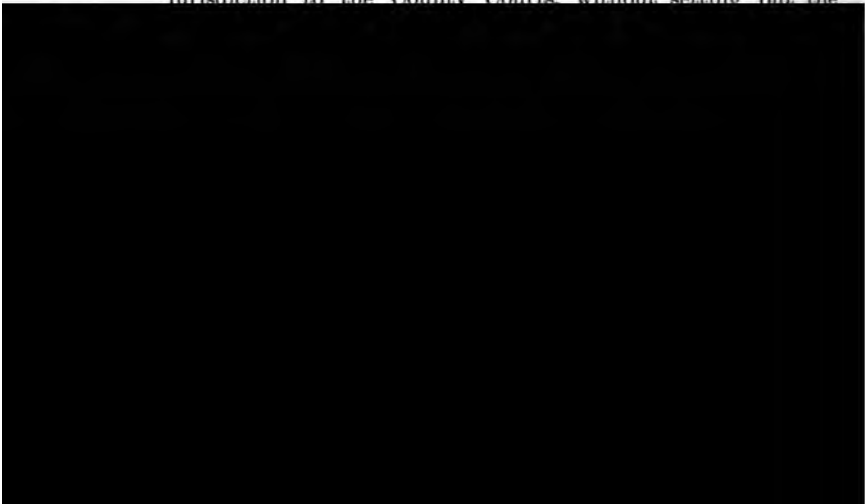
##### JURISDICTIONS AND PROCEEDINGS UNDER "THE PUBLIC HEALTH ACT, 1875."

Objects of  
"The Public  
Health Act,  
1875."

"THE Public Health Act, 1875," 38 & 39 Vict. c. 55, consolidates and amends the Acts relating to public health, local government, and the removal of nuisances. It establishes "Urban Sanitary Authorities" and "Rural Sanitary Authorities." And it invests the authorities so created with extensive powers as to sanitary matters—including powers to remove nuisances, and to sewer, drain, and pave streets. It also contains, it is needless to say, numerous provisions by which elaborate machinery is created for carrying into execution the objects of the Act, as thus briefly sketched.

Division of  
the subject.

The provisions of the Act are so multifarious, that it is extremely difficult to deal with the subjects over which it gives jurisdiction to the County Courts, without setting out the



The interpretation clause of the Act is in the following terms :—

- “In this Act, if not inconsistent with the context, the following words and expressions have the meanings hereinafter respectively assigned to them ; that is to say,
- “‘Borough’ means any place for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled ‘An Act to provide for the Regulation of Municipal Corporations in England and Wales,’ and any Act amending the same :
- “‘The metropolis’ means the city of London and all parishes and places mentioned in Schedules A., B., and C. to ‘The Metropolis Management Act, 1855’ :
- “‘Local Government District’ means any area subject to the jurisdiction of a local board constituted in pursuance of ‘The Local Government Acts’ before the passing of this Act, or in pursuance of this Act, and ‘local board’ means any board so constituted :
- “‘Improvement Act District’ means any area for the time being subject to the jurisdiction of any improvement commissioners as hereinafter defined :
- “‘Improvement Commissioners’ means any commissioners, trustees, or other persons invested by any local Act with powers of town government and rating :
- “‘Parish’ means a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed :
- “‘Union’ means a union of parishes incorporated or united for the relief or maintenance of the poor under any public or local Act of Parliament, and includes any parish subject to the jurisdiction of a separate board of guardians :
- “‘Guardians’ means any persons or body of persons by whom the relief of the poor is administered in any union :
- “‘Person’ includes any body of persons, whether corporate or unincorporate :
- “‘Local Authority’ means urban sanitary authority and rural sanitary authority :
- “‘Surveyor’ includes any person appointed by a rural authority to perform any of the duties of surveyor under this Act :
- “‘Lands’ and ‘Premises’ include messuages, buildings, lands, easements, and hereditaments of any tenure :
- “‘Owner’ means the person for the time being receiving the rackrent of the lands or premises in connexion

*Interpretation  
Clauses.  
The Public  
Health Act,  
1875, s. 4.*

*The Public  
Health Act,  
1875, s. 4.*

- “ with which the word is used, whether on his own
- “ account or as agent or trustee for any other person,
- “ or who would so receive the same if such lands or
- “ premises were let at a rackrent :
- “ ‘ Rackrent ’ means rent which is not less than two-thirds
- “ of the full net annual value of the property out of
- “ which the rent arises ; and the full net annual value
- “ shall be taken to be the rent at which the property
- “ might reasonably be expected to let from year to
- “ year, free from all usual tenant’s rates and taxes,
- “ and tithe commutation rentcharge (if any), and
- “ deducting therefrom the probable average annual
- “ cost of the repairs, insurance, and other expenses
- “ (if any) necessary to maintain the same in a state
- “ to command such rent :
- “ ‘ Street ’ includes any highway (not being a turnpike
- “ road), and any public bridge (not being a county
- “ bridge), and any road, lane, footway, square, court,
- “ alley, or passage, whether a thoroughfare or not :
- “ ‘ House ’ includes schools, also factories and other build-
- “ ings in which more than twenty persons are em-
- “ ployed at one time :
- “ ‘ Drain ’ means any drain of and used for the drainage of
- “ one building only, or premises within the same
- “ curtilage, and made merely for the purpose of com-
- “ municating therefrom with a cesspool or other like
- “ receptacle for drainage, or with a sewer into which
- “ the drainage of two or more buildings or premises
- “ occupied by different persons is conveyed :
- “ ‘ Sewer ’ includes sewers and drains of every description,
- “ except drains to which the word ‘ drain ’ interpreted
- “ as aforesaid applies, and except drains vested in
- “ or under the control of any authority having the
- “ management of roads and not being a local autho-
- “ rity under this Act :
- “ ‘ Slaughter-house ’ includes the buildings and places com-
- “ monly called slaughter-houses and knackers’ yards,
- “ and any building or place used for slaughtering
- “ cattle, horses, or animals of any description for
- “ sale :
- “ ‘ Water Company ’ means any person or body of persons
- “ corporate or unincorporate supplying, or who may
- “ hereafter supply water for his or their own profit :
- “ ‘ Waterworks ’ includes streams, springs, wells, pumps,
- “ reservoirs, cisterns, tanks, aqueducts, cuts, sluices,
- “ mains, pipes, culverts, engines, and all machinery,
- “ lands, buildings, and things for supplying, or used
- “ for supplying water, also the stock in trade of any
- “ water company :



- “ ‘Bakehouse Regulation Act’ means 26 & 27 Vict. c. 40.  
 “ (‘Bakehouse Regulation Act, 1863’): *The Public Health Act, 1875, s. 4.*
- “ ‘Artizans and Labourers Dwellings Act’ means 31 & 32  
 “ Vict. c. 130. (‘Artizans and Labourers Dwellings  
 “ Act, 1868’):
- “ ‘Baths and Wash-houses Acts’ means 9 & 10 Vict. c. 74.  
 “ (‘An Act to encourage the establishment of Public  
 “ Baths and Wash-houses’); 10 & 11 Vict. c. 61.  
 “ (‘An Act to amend the Act for the establishment of  
 “ Public Baths and Wash-houses’):
- “ ‘Labouring Classes Lodging Houses Acts’ means 14 &  
 “ 15 Vict. c. 34. (‘Labouring Classes Lodging  
 “ Houses Act, 1851’); 29 & 30 Vict. c. 28.  
 “ (‘Labouring Classes Dwelling Houses Act, 1866’);  
 “ 30 & 31 Vict. c. 28. (‘Labouring Classes Dwelling  
 “ Houses Act, 1867’):
- “ ‘Sanitary Acts’ means all the above-mentioned Acts and  
 “ the Acts mentioned in Part I. of Schedule V. to this  
 “ Act:
- “ ‘Sanitary Purposes’ means any object or purposes of  
 “ ‘The Sanitary Acts’:
- “ ‘Court of Quarter Sessions’ means the Court of general  
 “ or quarter sessions of the peace having jurisdiction  
 “ over the whole or any part of the district or place  
 “ in which the matter requiring the cognizance of  
 “ general or quarter sessions arises:
- “ ‘Court of Summary Jurisdiction’ means any justice or  
 “ justices of the peace, stipendiary or other magistrate  
 “ or officer, by whatever name called, to whom juris-  
 “ diction is given by ‘The Summary Jurisdiction  
 “ Acts,’ or any Acts therein referred to:
- “ ‘Summary Jurisdiction Acts’ means the Act of the  
 “ session of the eleventh and twelfth years of the  
 “ reign of Her present Majesty, chapter forty-three,  
 “ intituled ‘An Act to facilitate the performance of  
 “ the duties of justices of the peace out of sessions  
 “ within England and Wales, with respect to sum-  
 “ mary convictions and orders,’ and any Act amend-  
 “ ing the same.”—38 & 39 Vict. c. 55, s. 4.

Notice under the Act may be printed or written, or partly in writing and partly in print.

On this subject, the Act provides generally as follows:—

- “ Notices, orders, and other such documents under this Act  
 “ may be in writing or print, or partly in writing and partly in  
 “ print; and if the same require authentication by the local  
 “ authority, the signature thereof by the clerk to the local  
 “ authority or their surveyor or inspector of nuisances shall be  
 “ sufficient authentication.”—38 & 39 Vict. c. 55, s. 266.

Notices under  
 Act may be  
 partly written  
 and partly  
 printed.

*The Public  
 Health Act,  
 1875, s. 266.*

How notices  
are to be  
served.  
The Public  
Health Act,  
1875, s. 267.

SERVICE of notices and other documents is regulated by the following section:—

- Notices, orders, and any other documents required or
- authorised to be served under this Act may be served by
- delivering the same to or at the residence of the person to
- whom they are respectively addressed, or where addressed to
- the owner or occupier of premises by delivering the same or
- a true copy thereof to some person on the premises, or if
- there is no person on the premises who can be so served by
- fixing the same on some conspicuous part of the premises;
- they may also be served by post by a prepaid letter, and if
- served by post shall be deemed to have been served at the
- time when the letter containing the same would be delivered
- in the ordinary course of post, and in proving such service
- it shall be sufficient to prove that the notice, order, or other
- document was properly addressed and put into the post.

- Any notice by this Act required to be given to the owner or occupier of any premises may be addressed by the description of the 'owner' or 'occupier' of the premises (naming them) in respect of which the notice is given, without further name or description."—38 & 39 Vict. c. 55, s. 267.

Notices may  
which the  
may given  
authorisation  
to the County  
Council.  
1. The Council  
may the ex-  
penses of  
whenever  
necessary.

As regards the matters over which the County Courts are given jurisdiction under "The Public Health Act," they may be divided under three heads, as follow:—

First, the Act (c) gives the County Court jurisdiction to entertain proceedings for the recovery of expenses incurred in abating nuisances. This jurisdiction will be considered in the next section of the present chapter.

Secondly, another section of the Act (d) enables a local sanitary authority to call on persons owning property which abuts on a street which is not properly made up or not properly



amount of £20 (e). It is, however, to be noticed that now, under the above section 261, the County Court only has jurisdiction in respect of demands "which local authorities are empowered to recover in a summary manner." It, therefore, is necessary to see what sums can be so recovered.

sums are within above section.

"The Public Health Act, 1875," enacts as follows:—

"All offences under this Act, and all penalties, forfeitures, costs, and expenses under this Act directed to be recovered in a summary manner, or the recovery of which is not otherwise provided for, may be prosecuted and recovered in manner directed by 'The Summary Jurisdiction Acts' before a Court of summary jurisdiction."—38 & 39 Vict. c. 55, s. 251.

Penalties are recoverable.

*The Public Health Act, 1875, s. 251.*

"If any person assessed to any rate made under this Act by any urban authority fails to pay the same when due, and for the space of fourteen days after the same has been lawfully demanded in writing, or if any person quits or is about to quit any premises without payment of any such rate then due from him in respect of such premises, and refuses to pay the same after lawful demand thereof in writing, any justice may summon the defaulter to appear before a Court of summary jurisdiction to show cause why the rate in arrear should not be paid; and if the defaulter fails to appear, or if no sufficient cause for non-payment is shown, the Court may make an order for payment of the same, and, in default of compliance with such order, may by warrant cause the same to be levied by distress of the goods and chattels of the defaulter.

Rates are recoverable.

*The Public Health Act, 1875, s. 256.*

"The costs of the levy of arrears of any rate may be included in the warrant for such levy."—38 & 39 Vict. c. 55, s. 256.

In effect, a limitation is imposed as to the time within which the proceedings must be taken. For the option given by this section to proceed in the County Court is subject to the same limitation as summary proceedings before justices. The words "*may, at the option of the local authority, be taken in the County Court,*" which occur in the above enactment, have been held to mean, in a case decided on section 24 of "The Local Government (1858) Amendment Act, 1861" (24 & 25 Vict. c. 61), that as long as the local board have power to go before the justices, they may go before the County Court; but when the power to go before justices has gone, the jurisdiction of the County Court is at an end (f). In short, after the time limited has elapsed, no option then exists (g).

Within what time proceedings must be taken.

(e) 24 & 25 Vict. c. 61, s. 24 (now repealed).

(f) *Tottenham Local Board v. Rowell*, 1 Ex. D. 514 (C. A.), per Mellish, L. J., at p. 518. See, also, *West Ham Local Board v. Maddams* (Q. B. D.), reported L. R. 1 Ex. D. 516. note.

(g) *Tottenham Local Board v. Rowell*, ubi supra, per Quain, J.

Now, as regards the time within which summary proceedings must be taken, the subject is regulated by "The Summary Jurisdiction Act, 1848," which enacts that where no time shall be specially limited for making any complaint before the justices, such complaint shall be made within six calendar months from the time when the matter of such complaint arose.—11 & 12 Vict. c. 43, s. 11.

**Parties.**

Some general provisions as to the parties by whom proceedings under "The Public Health Act, 1875," may be taken in the County Courts are also contained in the Act. The following sections of "The Public Health Act, 1875," apply, generally, to all legal proceedings to which local authorities are parties :—

**How local authority may appear.**

*The Public Health Act, 1875, s. 259.*

"Any local authority may appear before any Court, or in any legal proceeding by their clerk, or by any officer or member authorised generally or in respect of any special proceeding by resolution of such authority, and their clerk, or any officer or member so authorised shall be at liberty to institute and carry on any proceeding which the local authority is authorised to institute and carry on under this Act."—38 & 39 Vict. c. 55, s. 259.

*The Public Health Act, 1875, s. 260.*

"In any proceeding instituted by or against a local authority under this Act it shall not be necessary for the plaintiff to prove the corporate name of the local authority or the constitution or limits of their district : Provided that this section shall not abridge or prejudice the right of any defendant to take or avail himself of any objection which he might have taken or availed himself of if this Act had not been passed."—38 & 39 Vict. c. 55, s. 260.

**What parties may sue for penalties.**

As regards penalties imposed by the Act, it is to be noticed that they are recoverable (1.) at the suit of a party aggrieved ;

Health Act, 1875," are commenced by plaint or petition (*h*). And "The County Court Rules, 1875" apply to such proceedings, so far as such rules are respectively applicable (*i*).

How proceedings are taken.

The practice in proceedings under "The Public Health Act" whether they be by way of action or by way of petition will be found sufficiently described in the Introductory Chapter to the present Book of this work (*k*).

Practice on proceedings.

It is submitted that, since proceedings under the Act are in the nature of an ordinary action, an appeal lies from the County Court to the High Court, in such cases. It is also clear, beyond all doubt, that in all cases the party aggrieved by any decision of the local authority, can appeal to the General Board of Health, who can correct any irregularity or injustice that may have occurred (*l*), and before whom *all* questions can be raised by the appellant.

Appeals.

## SECTION II.—THE RECOVERY OF EXPENSES INCURRED IN THE ABATEMENT OF NUISANCES.

The following sections of "The Public Health Act, 1875" enable a sanitary authority on complaint being made to it to obtain an order from justices for the abatement of any nuisance within its jurisdiction, and, on non-compliance with such order, themselves to abate the nuisance and recover the expenses incurred in respect of it.

Power of a sanitary authority to obtain an order to abate a nuisance, and on non-compliance execute any necessary work and recover expenses.  
Definition of nuisances.  
*The Public Health Act, 1875, s. 91.*

"For the purposes of this Act,—

- "1. Any premises in such a state as to be a nuisance or  
"injurious to health :
- "2. Any pool, ditch, gutter, watercourse, privy, urinal,  
"cesspool, drain, or ashpit so foul or in such a  
"state as to be a nuisance or injurious to health :
- "3. Any animal so kept as to be a nuisance or injurious  
"to health :
- "4. Any accumulation or deposit which is a nuisance or  
"injurious to health :
- "5. Any house or part or a house so overcrowded as to be  
"dangerous or injurious to the health of the in-  
"mates, whether or not members of the same  
"family :
- "6. Any factory, workshop, or workplace (not already  
"under the operation of any general Act for the  
"regulation of factories or bakehouses), not kept  
"in a cleanly state, or not ventilated in such a  
"manner as to render harmless as far as practicable

(*h*) Ord. xl. *ante*, p. 887.

(*i*) *Ib.*

(*k*) *Ante*, pp. 886 *et seq.*

(*l*) *Per Cockburn, C. J.*, in *Cook v. Ipswich Local Board*, L. R. 6 Q. B., at p. 464.

*The Public  
Health Act,  
1875, s. 91.*

- “ any gases, vapours, dust or other impurities  
“ generated in the course of the work carried on  
“ therein that are a nuisance or injurious to health,  
“ or so overcrowded while work is carried on as to  
“ be dangerous or injurious to the health of those  
“ employed therein :
- “ 7. Any fireplace or furnace which does not as far as  
“ practicable consume the smoke arising from the  
“ combustibles used therein, and which is used for  
“ working engines by steam, or in any mill, factory,  
“ dyehouse, brewery, bakehouse, or gaswork, or in  
“ any manufacturing or trade process whatsoever ;  
“ and
- “ Any chimney (not being the chimney of a private  
“ dwelling-house) sending forth black smoke in  
“ such quantity as to be a nuisance,  
“ shall be deemed to be nuisances liable to be dealt with  
“ summarily in manner provided by this Act : Provided—
- “ First. That a penalty shall not be imposed on any person  
“ in respect of any accumulation or deposit necessary  
“ for the effectual carrying on any business or manu-  
“ facture if it be proved to the satisfaction of the  
“ Court that the accumulation or deposit has not  
“ been kept longer than is necessary for the purposes  
“ of the business or manufacture, and that the best  
“ available means have been taken for preventing  
“ injury thereby to the public health :
- “ Secondly. That where a person is summoned before any  
“ Court in respect of a nuisance arising from a fire-  
“ place or furnace which does not consume the smoke  
“ arising from the combustibles used in such fireplace

"of any local authority may be given to such local authority by any person aggrieved thereby, or by any two inhabitant householders of such district, or by any officer of such authority, or by the relieving officer, or by any constable or officer of the police force of such district."—38 & 39 Vict. c. 55, s. 93.

Information as to nuisances may be given to local authority.

"On the receipt of any information respecting the existence of a nuisance the local authority shall, if satisfied of the existence of a nuisance, serve a notice on the person by whose act, default, or sufferance the nuisance arises or continues, or, if such person cannot be found, on the owner or occupier of the premises on which the nuisance arises, requiring him to abate the same within a time to be specified in the notice, and to execute such works and do such things as may be necessary for that purpose: Provided—

*The Public Health Act, 1875, s. 93.*

Local authority may serve a notice to abate on owner of any premises on which nuisance exists.

*The Public Health Act, 1875, s. 94.*

"First. That where the nuisance arises from the want or defective construction of any structural conveyance, or where there is no occupier of the premises, notice under this section shall be served on the owner:

"Secondly. That where the person causing the nuisance cannot be found, and it is clear that the nuisance does not arise or continue by the act, default, or sufferance of the owner or occupier of the premises, the local authority may themselves abate the same without further order."—38 & 39 Vict. c. 55, s. 94.

"If the person on whom a notice to abate a nuisance has been served makes default in complying with any of the requisitions thereof within the time specified, or if the nuisance, although abated since the service of the notice is, in the opinion of the local authority, likely to recur on the same premises, the local authority shall cause a complaint relating to such nuisance to be made before a justice, and such justice shall thereupon issue a summons requiring the person on whom the notice was served to appear before a Court of summary jurisdiction."—38 & 39 Vict. c. 55, s. 95.

On non-compliance with notice to abate may proceed before Justices.

*The Public Health Act, 1875, s. 95.*

"If the Court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises, the Court shall make an order on such person requiring him to comply with all or any of the requisitions of the notice, or otherwise to abate the nuisance within a time specified in the order, and to do any works necessary for that purpose; or an order prohibiting the recurrence of the nuisance and directing the execution of any works necessary to prevent the recurrence; or an order both requiring abatement and prohibiting the recurrence of the nuisance.

And on hearing, order may be made dealing with the nuisance.

*The Public Health Act, 1875, s. 96.*

"The Court may by their order impose a penalty not exceeding five pounds on the person on whom the order is made, and shall also give directions as to the payment of all costs

“incurred up to the time of the hearing or making the order for abatement or prohibition of the nuisance.”—38 & 39 Vict. c. 55, s. 96.

And if the nuisance renders house unfit for habitation, order prohibiting occupation may be made.

*The Public Health Act, 1875, s. 97.*

Penalties for disobeying orders of a Court of summary jurisdiction.

*The Public Health Act, 1875, s. 98.*

Pending an appeal to quarter sessions, no further steps to be taken.

*The Public Health Act,*

“Where the nuisance proved to exist is such as to render a house or building, in the judgment of the Court, unfit for human habitation, the Court may prohibit the using thereof for that purpose, until, in its judgment, the house or building is rendered fit for that purpose; and on the Court being satisfied that it has been rendered fit for that purpose, the Court may determine its previous order by another, declaring the house or building habitable, and from the date thereof such house or building may be let or inhabited.”—38 & 39 Vict. c. 55, s. 97.

“Any person not obeying an order to comply with the requisitions of the local authority, or otherwise to abate the nuisance, shall, if he fails to satisfy the Court that he has used all due diligence to carry out such order, be liable to a penalty not exceeding ten shillings per day during his default; and any person knowingly and wilfully acting contrary to an order of prohibition, shall be liable to a penalty not exceeding twenty shillings per day during such contrary action; moreover, the local authority may enter the premises to which any order relates, and abate the nuisance, and do whatever may be necessary in execution of such order, and recover in a summary manner the expenses incurred by them from the person on whom the order is made.”—38 & 39 Vict. c. 55, s. 98.

“Where any person appeals against an order to the Court of quarter sessions in manner provided by this Act, no liability to penalty shall arise, nor shall any proceedings be taken or work be done under such order, until after the



"the existence of any nuisance thereon, or of enforcing the provisions of any Act in force within the district requiring fireplaces and furnaces to consume their own smoke, at any time between the hours of nine in the forenoon and six in the afternoon, or in the case of a nuisance arising in respect of any business, then at any hour when such business is in progress or is usually carried on.

Power of local authority to enter on any premises.

*The Public Health Act, 1875, s. 102.*

"Where under this Act a nuisance has been ascertained to exist, or an order of abatement or prohibition has been made, the local authority or any of their officers shall be admitted from time to time into the premises between the hours aforesaid, until the nuisance is abated, or the works ordered to be done are completed, as the case may be.

"Where an order of abatement or prohibition has not been complied with, or has been infringed, the local authority, or any of their officers, shall be admitted from time to time at all reasonable hours, or at all hours during which business is in progress or is usually carried on, into the premises where the nuisance exists, in order to abate the same.

"If admission to premises for any of the purposes of this section is refused, any justice on complaint thereof on oath by any officer of the local authority (made after reasonable notice in writing of the intention to make the same has been given to the person having custody of the premises) may, by order under his hand, require the person having custody of the premises to admit the local authority, or their officer, into the premises during the hours aforesaid, and if no person having custody of the premises can be found, the justice shall, on oath made before him of that fact, by order under his hand authorise the local authority or any of their officers to enter such premises during the hours aforesaid.

"Any order made by a justice for admission of the local authority or any of their officers on premises shall continue in force until the nuisance has been abated, or the work for which the entry was necessary has been done."—38 & 39 Vict. c. 55, s. 102.

Penalty for non-compliance with Justice's order to admit a local authority on premises.  
*The Public Health Act, 1875, s. 103.*

"Any person who refuses to obey an order of a justice for admission of the local authority or any of their officers on any premises shall be liable to a penalty not exceeding five pounds."—38 & 39 Vict. c. 55, s. 103.

In case the local sanitary authority fail to take proper proceedings for the abatement of a nuisance, the Local Government Board may cause such proceedings to be taken by some person appointed by such Board. The person so appointed is invested with the same powers as the local sanitary authority. The section of the Act containing these provisions is as follows :—

On default by sanitary authority, Local Government Board may appoint a person to take proceedings for removal of nuisances.

"Where it is proved to the satisfaction of the Local Government Board that a local authority have made default in

*The Public Health Act, 1875, s. 106.*

“ doing their duty in relation to nuisances under this Act, the Local Government Board may authorise any officer of police acting within the district of the defaulting authority to institute any proceeding which the defaulting authority might institute with respect to such nuisances, and such officer may recover in a summary manner or in any County or Superior Court any expenses incurred by him, and not paid by the person proceeded against, from the defaulting authority :

“ But such officer of police shall not be at liberty to enter any house or part of a house used as the dwelling of any person without such person’s consent, or without the warrant of a justice, for the purpose of carrying into effect this enactment.”—38 & 39 Vict. c. 55, s. 106.

*Parties to proceedings to abate nuisances.*

*The Public Health Act, 1875, s. 255.*

As regards parties to proceedings instituted in the case of nuisances, the following section governs the subject :—

“ Where any nuisance under this Act appears to be wholly or partially caused by the acts or defaults of two or more persons, it shall be lawful for the local authority or other complainant to institute proceedings against any one of such persons, or to include all or any two or more of such persons in one proceeding ; and any one or more of such persons may be ordered to abate such nuisance, so far as the same appears to the Court having cognizance of the case to be caused by his or their acts or defaults, or may be prohibited from continuing any acts or defaults which, in the opinion of such Court, contribute to such nuisance, or may be fined or otherwise punished, notwithstanding that the acts or defaults of any one of such persons would not separately have caused a nuisance ; and the costs may be distributed as to such Court may appear fair and reasonable.

enactments above set out. The jurisdiction of the County Court to entertain an action for such expenses is derived from the following section of the Act :—

above enact-  
ments.

*The Public  
Health Act,  
1875, s. 104.*

“All reasonable costs and expenses incurred in making a complaint, or giving notice, or in obtaining any order of the Court or any justice in relation to a nuisance under this Act, or in carrying the same into effect, shall be deemed to be money paid for the use and at the request of the person on whom the order is made ; or if the order is made on the local authority, or if no order is made, but the nuisance is proved to have existed when the complaint was made or the notice given, then of the person by whose act or default the nuisance was caused ; and in case of nuisances caused by the act or default of the owner of premises, such costs and expenses may be recovered from any person who is for the time being owner of such premises : Provided that such costs and expenses shall not exceed in the whole one year's rack-rent of the premises.

“Such costs and expenses, and any penalties incurred in relation to any such nuisance, may be recovered in a summary manner or in any County or Superior Court ; and the Court shall have power to divide costs, expenses, and penalties, between persons by whose acts or defaults a nuisance is caused as to it may seem just.

“Any costs and expenses recoverable under this section by a local authority from an owner of premises may be recovered from the occupier for the time being of such premises ; and the owner shall allow such occupier to deduct any moneys which he pays under this enactment out of the rent from time to time becoming due in respect of the said premises, as if the same had been actually paid to such owner as part of such rent :

“Provided, that no such occupier shall be required to pay any further sum than the amount of rent for the time being due from him, or which, after demand of such costs or expenses from such occupier, and after notice not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier, unless he refuses, on application to him by the local authority, truly to disclose the amount of his rent, and the name and address of the person to whom such rent is payable ; but the burden of proof that the sum demanded from any such occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall lie on such occupier :

“Provided also, that nothing herein contained shall affect any contract between any owner or occupier of any house, building, or other property, whereby it is or may be agreed that the occupier shall pay or discharge all rates, dues, and sums of money payable in respect of such house, building, or

*The Public Health Act, 1875, s. 104.*  
Practice.

“other property, or to affect any contract whatsoever between landlord and tenant.”—38 & 39 Vict. c. 55, s. 104.

Proceedings under the above sections, may be either by way of action or of petition. The practice will, in either case, be found fully set out in the introductory chapter (*l*) of the present book; as supplemented by the special enactments as to the service of notices by the authority, the parties to the proceedings, and the mode of appearance by the authority, which are set out in the preceeding section of this chapter (*m*).

### SECTION III.—PROCEEDINGS TO RECOVER FROM FRONTAGERS EXPENSES CONNECTED WITH STREETS.

Power to compel frontagers to pave, &c., streets.

*The Public Health Act, 1875, s. 150.*

“The Public Health Act, 1875,” re-enacting previous provisions to the same effect, contains a section with reference to streets being, on their formation, placed in proper order. The section contained in that Act, is as follows :—

“The Public Health Act, 1875,” provides as follows :—

“Where any street within any urban district (not being a highway repairable by the inhabitants at large) or the carriage-way, footway, or any other part of such street, is not sewered, levelled, paved, metalled, flagged, channelled, and made good, or is not lighted to the satisfaction of the urban authority, such authority may, by notice addressed to the respective owners or occupiers of the premises fronting, adjoining, or abutting on such parts thereof, as may require to be sewered, levelled, paved, metalled, flagged, or channelled, or to be lighted, require them to sewer, level, pave, metal, flag, channel, or make good, or to provide proper means for light-

"If such notice is not complied with, the urban authority may, if they think fit, execute the works mentioned or referred to therein; and may recover in a summary manner the expenses incurred by them in so doing from the owners in default, according to the frontage of their respective premises, and in such proportion as is settled by the surveyor of the urban authority, or (in case of dispute) by arbitration in manner provided by this Act; or the urban authority may by order declare the expenses so incurred to be private improvement expenses.

*The Public Health Act, 1875, s. 150.*

"The same proceedings may be taken, and the same powers may be exercised, in respect of any street or road of which a part is or may be a public footpath or repairable by the inhabitants at large as fully as if the whole of such street or road was a highway not repairable by the inhabitants at large."—88 & 89 Vict. c. 55, s. 150.

Certain exemptions from liability under the above section are created by "The Public Health Act, 1875," which, on this subject, enacts as follows:

*Exemption of churches, &c.*

"The incumbent or minister of any church, chapel, or place appropriated to public religious worship, which is now by law exempt from rates for the relief of the poor, shall not be liable to any expenses under the last preceding section as the owner or occupier of such church, chapel, or place, or of any churchyard or burial-ground attached thereto, nor shall any such expenses be deemed to be a charge on such church, chapel, or other place or on such churchyard or burial-ground, or to subject the same to distress, execution, or other legal process; and the urban authority may, if they think fit, undertake any works from the expenses of which any such incumbent or minister is hereby exempted."—88 & 89 Vict. c. 55, s. 151.

*The Public Health Act, 1875, s. 151.*

Having now given the sections themselves of the Act which prescribe what must be done in the cases indicated, it may be as well briefly to explain, and as simply as possible, the various preliminary steps which have to be taken before expenses incurred by an urban authority can be recovered in the County Court or in a summary manner.

*Proceedings under the above sections.*

*First*, the urban authority must cause the plans and sections required by the Act to be prepared, to be made under the direction of their surveyor, and, when made, they must be deposited in the office of the urban authority (n). The deposit of plans is not, it seems, a condition precedent so as to render void subsequent notices and prevent the expenses from being recoverable (o).

*Preparation and deposit of plans.*

(n) Sect. 150, *supra*.  
(o) *Per Cockburn, C. J., and Blackburn, J., in Cook v. Ipswich Local Board*, L. R. 6 Q. B. 461, 460, 466.

Service of  
notice on  
owners or  
occupiers.

*Secondly*, the urban authority must cause a notice to be prepared for service upon the respective owners or occupiers of the adjacent premises. This notice must *either* specify the works required to be done, *or* state that particulars can be obtained at the office of the surveyor (*p*). But it is expressly provided that a reference in such notice to the plans and sections above mentioned shall be sufficient, without requiring any copy of such plans and sections to be annexed to such notice (*q*). The service of this preliminary notice is a condition precedent to the liability of the owners or occupiers. Consequently, though the work has been done by the urban authority and the expenses apportioned, and the apportionment not disputed, the expenses cannot be recovered without proof of this notice (*r*). It has been held that a notice which is partly *ultra vires* can, nevertheless, be enforced as to the part which is valid (*s*).

The notice must also specify some time within which the work is to be done. The limit prescribed should be a *reasonable* one, having regard to the work which has to be performed. It is submitted that it ought never to be less than a month's notice.

Procedure by  
urban authority  
to recover  
expenses from  
owners or  
occupiers.

*Thirdly*, in the event of the notice not being complied with within the time limited, the urban authority may, if they think fit, execute the works mentioned and referred to therein. The expenses incurred by them in so doing may be recovered, *either* by compelling the frontagers who are in default to make payment of the proportion due from them, according to the frontage of their respective premises, *or*, they may by order declare the expenses so incurred to be private improvement expenses. Both these methods of procedure cannot, however, be adopted, and the urban authority must elect which they will follow (*t*).

In the event of its being decided by the urban authority to

tioned by the surveyor (*v*). Service of this notice is a condition precedent to the right of the urban authority to recover the sum due ; and it has, moreover, been held that notice of apportionment is not equivalent to a notice of demand (*x*).

The notice must be authenticated and served in manner already pointed out (*y*).

The notice of demand is a *three months' notice*, and, unless within that time the owner shall, by written notice, dispute the surveyor's apportionment, it is provided that such apportionment shall be binding and conclusive upon him (*z*). Accordingly, in a case of no dispute being raised by the owner, the sum apportioned can be recovered by the urban authority, either in a summary manner (*a*) or in a County Court (*b*). And, as has already been pointed out (*c*), whichever tribunal is selected by the urban authority, the proceedings must be taken by them *within* six months from the expiration of the three months' notice of demand.

In the event of the owner disputing the apportionment of the surveyor, within the time limited by the notice of demand, such dispute may, (1.) Be submitted to arbitration (*d*) in manner provided by the Act ; or (2.) Where the amount in dispute is *less than* £20, be determined, at the option of either party, before a Court of summary jurisdiction (*e*), and, *possibly*, before a County Court, if the latter tribunal be preferred (*f*).

First, in a case where resort is had to arbitration, the following sections of the Act, which regulate the practice, apply :—

“ In case of dispute as to the amount of any compensation to be made under the provisions of this Act (except where the mode of determining the same is specially provided for), and in case of any matter which by this Act is authorised or directed to be settled by arbitration, then, unless both parties concur in the appointment of a single arbitrator, each party shall appoint an arbitrator to whom the matter shall be referred.”—38 & 39 Vict. c. 55, s. 179.

“ With respect to arbitrations under this Act, the following regulations shall be observed ; (that is to say),

“ (1.) Every appointment of an arbitrator under this Act when made on behalf of the local authority

ment of sum apportioned.

Amount payable may be assessed by arbitration or, if under £20, by Justices.

(1.) Proceedings to assess amount payable by arbitration.

*The Public Health Act, 1875, s. 179*

*The Public Health Act, 1875, s. 180.*

(*v*) Sect. 257, *post*, pp. 953—954.  
 (*x*) *Grice v. Hunt*, 25 W. R. 543 ; S. C. 2 Q. B. D. 389 ; 46 L. J. Q. B. 202 ; 36 L. T. 404.  
 (*y*) See sects. 266, 267, *ante*, pp. 935—936.  
 (*z*) Sect. 257, *post*, pp. 953—954.  
 (*a*) *Ib.*  
 (*b*) Sect. 261, *ante*, p. 936.  
 (*c*) *Ante*, p. 937, and cases there cited.  
 (*d*) Sect. 150, *ante*, pp. 946—947.  
 (*e*) Sect. 181, *post*, pp. 952—953.  
 (*f*) See sect. 261, *ante*, p. 936.

*The Public  
Health Act,  
1879, s. 180.*

- “ shall be under their common seal, and on behalf of any other party under his hand, or if such party be a corporation aggregate under their common seal :
- “ (2.) Every such appointment shall be delivered to the arbitrators, and shall be deemed a submission to arbitration by the parties making the same :
- “ (3.) After the making of any such appointment, the same shall not be revoked without the consent of both parties, nor shall the death of either party operate as a revocation :
- “ (4.) If for the space of fourteen days after any matter by this Act authorised or directed to be settled by arbitration has arisen, and notice in writing by one party who has duly appointed an arbitrator has been given to the other party, stating the matter to be referred, and accompanied by a copy of such appointment, the party to whom notice is given fails to appoint an arbitrator, the arbitrator appointed by the party giving the notice shall be deemed to be appointed by and shall act on behalf of both parties :
- “ (5.) If before the determination of any matter so referred any arbitrator dies or refuses or becomes incapable to act, the party by whom such arbitrator was appointed may appoint in writing another person in his stead ; and if such party fails so to do for the space of seven days after notice in writing from the other party in that behalf, the remaining arbitrator may proceed *ex parte* ; and every arbitrator so appointed shall have the same powers and authorities as were vested in the arbitrator in whose stead the appointment is made :
- “ (6.) If a single arbitrator dies or becomes incapable to act before the making of his award, or fails to make his award within twenty-one days after his appointment, or within such extended time, if any, as may have been duly appointed by him for that purpose, the matters referred to him shall be again referred to arbitration under the provisions of this Act, as if no former reference had been made :
- “ (7.) Where there is more than one arbitrator, the arbitrators shall, before they enter on the reference, appoint by writing under their hands an umpire, and if the person appointed to be umpire



“ dies or becomes incapable to act, the arbitra- *The Public*  
 “ tors shall forthwith appoint another person in *Health Act,*  
 “ his stead ; and if the arbitrators neglect or 1875, s. 180.  
 “ refuse to appoint an umpire for seven days  
 “ after being requested so to do by any party to  
 “ the arbitration, the Local Government Board  
 “ shall, on the application of any such party,  
 “ appoint an umpire :

“(8.) If the arbitrators fail to make their award within  
 “ twenty-one days after the day on which the  
 “ last of them was appointed, or within such  
 “ extended time (if any) as may have been duly  
 “ appointed by them for that purpose, the  
 “ matters referred shall be determined by the  
 “ umpire :

“(9.) The time for making an award by arbitrators  
 “ under this Act, shall not in any case be ex-  
 “ tended beyond the period of two months from  
 “ the date of the submission, and the time for  
 “ making an award by an umpire under this Act,  
 “ shall not in any case be extended beyond the  
 “ period of two months from the date of the  
 “ reference of the matters to him :

“(10.) Before any arbitrator or umpire enters on a refer-  
 “ ence under this Act, he shall make and sub-  
 “ scribe the following declaration before a justice  
 “ of the peace ; (that is to say),

“ ‘ I, A. B., do solemnly and sincerely de-  
 “ ‘ clare that I will faithfully and honestly,  
 “ ‘ and to the best of my skill and ability,  
 “ ‘ hear and determine the matters referred  
 “ ‘ to me under “ The Public Health Act,  
 “ ‘ 1875.”

“ ‘ A. B.’

“(11.) Such declaration shall be annexed to the award  
 “ when made ; and any arbitrator or umpire who  
 “ wilfully acts contrary to such declaration, shall  
 “ be guilty of a misdemeanor ;

“(12.) Any arbitrator, arbitrators, or umpire, appointed  
 “ by virtue of this Act, may require the pro-  
 “ duction of such documents in the possession  
 “ or power of either party, as they or he may  
 “ think necessary for determining the matters  
 “ referred, and may examine the parties or their  
 “ witnesses on oath :

“(13.) The costs of and consequent upon the reference,  
 “ shall be in the discretion of the arbitrator or

*The Public  
Health Act,  
1875, s. 180.*

- “ arbitrators, or (in case the matters referred are  
“ determined by an umpire) of the umpire :
- “ (14.) Any submission to arbitration under the pro-  
“ visions of this Act, may be made a rule of any  
“ of the Superior Courts, on the application of  
“ any party thereto :
- “ (15.) The award of arbitrators, or of an umpire under  
“ this Act, shall be final and binding on all  
“ parties to the reference.”—38 & 39 Vict. c. 55,  
s. 180.

Assuming the arbitrator to decide in favour of the urban authority, the amount awarded by him must be paid by the persons liable. And his decision is conclusive upon the question of *amount*. Moreover, it would seem that a person who, *without dispute*, has paid to the urban authority the amount previously apportioned by their surveyor, is liable, notwithstanding, to pay the difference between that amount and any larger sum which may subsequently be awarded by an arbitrator appointed under the Act, even though such person may have taken no part in the arbitration (*g*). The ground on which this decision rests would appear to be, that the 257th section of the Act (*h*) provides that the apportionment of the surveyor “ *shall be binding and conclusive on such owner* ” (*i*). And that, therefore, as it is not made binding and conclusive *on the parties*, the local authority is quite at liberty to obtain a re-apportionment by an arbitrator, though the owner cannot do so (*k*). The award of the arbitrator is, however, expressly made “ *final and binding on all parties to the reference* ” (*l*). There is, consequently, no appeal from the award.

(2.) Proceed-  
ings to assess

Secondly, as already stated (*m*), where the amount in dispute is less than £20, instead of *arbitration*, recourse may be had to

"the surveyor of the local authority; and the Court may determine the amount of costs incurred in that behalf, and by whom such costs or any part of them shall be paid."—38 & 39 Vict. c. 55, s. 181.

As is obvious, from the *express* language of this enactment, the mode of determination given by this section can only be resorted to "where the amount in dispute is *less than* £20." And it is, perhaps, worthy of notice that, therefore, where the amount in dispute is *exactly* £20, arbitration must be resorted to. This would not have been the case had the limit imposed been any sum "*not exceeding* £20."

In cases to which this section applies, either party may select the tribunal indicated. For this mode of determination is expressly made available "*at the option of either party.*"

As regards the jurisdiction of the magistrates under section 181, it has been held by the Queen's Bench, on a similar section of 21 & 22 Vict. c. 98 (*n*), that, being in the position of arbitrators merely, "their jurisdiction is limited to inquiry whether, the expenses amounting to a given sum, the amount charged to a particular owner is his fair and just proportion (*o*). Consequently, they cannot allow any question to be gone into before them as to whether the amount charged by the local board as having been expended generally, was in fact expended (*p*). The person resisting the claim of the local authority, can only go into the question whether, the expense being taken at a given sum, the amount assessed upon him was a just proportion of the general expenses.

And where magistrates, under section 181 of the Act, have, in exercise of their province and duties as arbitrators, determined what the amount is which the owner of a particular frontage is called upon to pay, it becomes a very serious question, whether, in at once making a summary order for payment of such amount, they do not exceed their powers (*q*).

A sanitary authority, so soon as such expenses have been properly assessed—but not, it is to be observed, before—is enabled to recover expenses incurred under the section (section 150) above set out. The mode of recovery of such expenses is prescribed by the following section :—

"Where any local authority have incurred expenses for the repayment whereof the owner of the premises for or in respect of which the same are incurred is made liable under this Act or by any agreement with the local authority, such expenses may be recovered, together with interest at a rate not exceed-

Sanitary authority may obtain repayment of expenses assessed.

*The Public Health Act, 1875, s. 257.*

(*n*) Sect. 64.

(*o*) *Per* Cockburn, C.J., in *Cook v. Ipswich Local Board*, L. R. 6 Q. B. 451, 462.

(*p*) *Id.*

(*q*) *Cook v. Ipswich Local Board*, L. R. 6 Q. B. 451, 465, *per* Cockburn, C.J., and Blackburn, J.

*The Public  
Health Act,  
1875, s. 257.*

“ing five pounds per centum per annum, from the  
“service of a demand for the same till payment thereo  
“any person who is the owner of such premises wh  
“works are completed for which such expenses hav  
“incurred, and until recovery of such expenses and i  
“the same shall be a charge on the premises in res  
“which they were incurred. In all summary proceedi  
“a local authority for the recovery of expenses incur  
“them in works of private improvement, the time  
“which such proceedings may be taken shall be reckone  
“the date of the service of notice of demand.

“Where such expenses have been settled and apportio  
“the surveyor of the local authority as payable by such  
“such apportionment shall be binding and conclusive o  
“owner, unless within three months from service of no  
“him by the local authority or their surveyor of the a  
“settled by the surveyor to be due from such owner, b  
“by written notice dispute the same.

“The local authority may, by order, declare any su  
“penses to be payable by annual instalments within a  
“not exceeding thirty years, with interest at a rate not e  
“ing five pounds per centum per annum, until the  
“amount is paid ; and any such instalments and inter  
“any part thereof, may be recovered in a summary n  
“from the owner or occupier for the time being of  
“premises, and may be deducted from the rent of  
“premises, in the same proportions as are allowed in tl  
“of private improvement rates under this Act.”—88 & 89  
c. 55, s. 257.

If expenses  
declared a

A party served by the urban authority with notice, de  
the expenses a private improvement rate, may, if dissa

"ceded against such sum as the said Board may consider to be a just compensation for the loss damage or grievance thereby sustained by him."—38 & 39 Vict. c. 55, s. 268.

It is to be noticed that the right of appeal is expressly limited to "*any case in which the local authority are empowered to recover in a summary manner any expenses incurred by them, or to declare such expenses to be private improvement expenses.*" The right of appeal, therefore, does apply to cases arising under the 150th section of the Act. For it enables them to recover, in a summary manner, expenses incurred by them; and likewise provides that the urban authority may, in lieu thereof, "*by order declare the expenses so incurred to be private improvement expenses.*"

The language of this section (section 268) is not as clear as could be desired. For it leaves it somewhat doubtful whether the right of appeal should be exercised within twenty-one days after service of notice requiring the owner to execute the work, or within twenty-one days after notice requiring such owner to pay the sum apportioned by the surveyor of the urban authority. It is submitted, however, that the right of appeal may be exercised after the receipt of either notice.

A copy of the memorial, addressed by the appellant to the Local Government Board, should be delivered to the local authority. The delivery of such copy, it is to be noticed, operates as a stay of any proceedings which may have been commenced by the local authority against the party.

The decision of the Local Government Board is, as the section enacts, "*binding and conclusive on all parties.*"

In case the sum awarded to be paid for expenses, or any proportion of it which has been assessed by the local sanitary authority, as a private improvement rate, be not duly paid, the sanitary authority may, under the section already set out (section 257) take proceedings in the County Court for recovery of the amount.

Where a change of ownership has taken place in any of the premises liable, the proceedings should be taken against the person who was owner at the time of the completion of the works (r).

Such proceedings may be either by way of action or by way of petition. In either case, sufficient information as to the practice is contained in the introductory chapter to the present book of this work (s), and in the first section of this chapter (t).

Proceedings to enforce payment of expenses or of private improvement rates.

Against whom proceedings should be taken.

Practice.

(r) *The Queen v. Swindon Local Board*, L. R. 4 Q. B. Div. 305.

(s) *Ante*, pp. 886 *et seq.*


(t) *Ante*, pp. 932 *et seq.*

## BOOK V.—DIVISION III.

### PROCEEDINGS UNDER SPECIAL STATUTES PROVIDING FOR THE SETTLEMENT OF DISPUTES.

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In this, the third division of statutes giving special jurisdiction to the County Courts, it is proposed to group together those numerous and highly important enactments which make the County Court the tribunal for the settlement of disputes with regard to matters dealt with by such Acts. The earliest statute containing powers of this description is "The Succession Duty Act of 1853." Next in order comes "The Metropolitan Building Act, 1855." There then occurs a long interval, but in the year 1870 we find "The Attorneys and Solicitors Act, 1870," giving the County Court jurisdiction over agreements and disputes arising thereunder, between solicitors and their clients. "The Building Societies Act, 1874;" "The Friendly Societies Act, 1875;" and "The Industrial and Provident Societies Act, 1876," are almost identical with each other as regards the jurisdiction which they give to the County Court. They will therefore be placed



## BOOK V.—DIVISION III.

### PROCEEDINGS UNDER STATUTES PROVIDING SPECIALLY FOR THE SETTLEMENT OF DISPUTED MATTER.

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#### CHAPTER I.

##### PROCEEDINGS TO SETTLE AMOUNT OF DISPUTED SUCCESSION DUTY.

"THE Succession Duty Act, 1853," imposes, as is well known, a succession duty upon all persons becoming entitled on the death of another to landed property. The provisions of the Act are far too lengthy and elaborate to be set out here. It will suffice to say that, amongst other things, the Act contains numerous directions as to the mode of assessing succession duty; has appended to it tables by the aid of which the duty payable is to be computed; and directs that in each case the duty payable shall be assessed by the Commissioners of Inland Revenue.

The Act further provides an appeal against any assessment made by the Commissioners of Inland Revenue. And where the duty in dispute does not exceed £50, the appeal may be made to a County Court. Such appeal is conferred by the following section of the Act:—

"It shall be lawful for any accountable party dissatisfied with the assessment of the Commissioners, upon giving, within twenty-one days after the date of such assessment, notice in writing to the Commissioners of his intention to appeal against such assessment, and a statement of the grounds of such appeal, such statement to be furnished within the further period of thirty days, to appeal by petition accordingly to Her Majesty's Court of Exchequer in England, Scotland, or Ireland, according to the place in which the appellant shall be resident; and every such Court, or any Judge thereof sitting in Chambers, shall have jurisdiction to hear and determine the matter of such appeal and the costs

General outline of "The Succession Duty Act, 1853."

Where duty claimed under £50, the persons aggrieved may appeal to a County Court against assessments of duty made by the Commissioners of Inland Revenue. *The Succession Duty Act, 1853, s. 50.*

*The Succession  
Duty Act,  
1853, s. 50.*

"thereof, with power to direct, for the purposes of such appeal, any inquiry, valuation, or report to be made by any officer of the Court, or other person, as such Court or Judge may think fit: Provided, that where the sum in dispute in respect of duty on such assessment does not exceed fifty pounds, the accountable party may, having given notice of appeal and delivered a statement of the grounds thereof as hereinbefore directed, appeal to the Judge of the County Court in England, the Sheriff Court in Scotland, or the Assistant Barrister's Court in Ireland, for the district, county, or division in which the appellant shall be resident, or the property be situate; and every such Judge shall have jurisdiction to hear and determine the matter of such last-mentioned appeal, with the like power and authority as are by this section given to a Judge of Her Majesty's Court of Exchequer."—16 & 17 Vict. c. 51, s. 50.

Parties to  
appeal.

It is hardly necessary to point out that the party objecting to the assessment is the appellant, and that the Commissioners of Inland Revenue are the respondents.

Notice before  
appeal.

A party desirous of appealing from the assessment of the Commissioners is required by the above section *within twenty-one days after the date of such assessment*, to give notice in writing to the Commissioners of his intention to appeal against such assessment (a). Moreover, "*within the further period of thirty days*" (b), the appellant must furnish a statement of the grounds of his appeal (c).

In what  
district the  
appeal to a  
County Court  
must be  
brought.

The Act, it will be noted, directs that the appeal shall be "to the Judge of the County Court in which the appellant shall be resident or the property be situate" (d).

Mode of  
appealing.

Appeal proceedings in the County Court under the above section of "The Succession Duty Act, 1853," may, under Order XL. of "The County Court Rules, 1867" (e), be instituted either by petition or by action commenced by plaint. It is believed that in actual practice a petition will be found the more convenient process.

Practice.

Whichever mode of instituting the appeal be adopted, the practice can be sufficiently ascertained from the introductory chapter to the present book of this Work (f).

Trial.

It may usefully be noted here, however, that *the Judge* of the County Court (not any other tribunal, but the Judge personally), is empowered, by section 50 of "The Succession Duty

(a) 16 & 17 Vict. c. 51, s. 50, *supra*.

(b) *Quære*, does this period commence from the expiration of the notice or from the date of the assessment. The language of the Act is not very clear on this subject. See sect. 50, *supra*.

(c) 16 & 17 Vict. c. 51, s. 50, *supra*.

(d) *Ib.*

(e) See this Order in full, *ante*, p. 887.

(f) See *ante*, pp. 886 *et seq.*



Act, 1853 "(g), to "*hear and determine*" the matter of the appeal. His decision is, it seems, final, and cannot be reviewed on appeal.

It is, however, also to be noticed that the Judge has power to direct, for the purposes of the appeal, "any inquiry, valuation, or report to be made by any officer of the Court, or other person," as the Judge may think fit.

The costs of the appeal are also by the section under consideration placed in the discretion of the Judge. Costa.

(g) *Ante*, pp. 957-958.

## BOOK V.—DIVISION III.

### PROCEEDINGS UNDER STATUTES PROVIDING SPECIALLY FOR THE SETTLEMENT OF DISPUTES.

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#### CHAPTER II.

##### JURISDICTION AND PROCEEDINGS UNDER "THE METROPOLITAN BUILDING ACT, 1855."

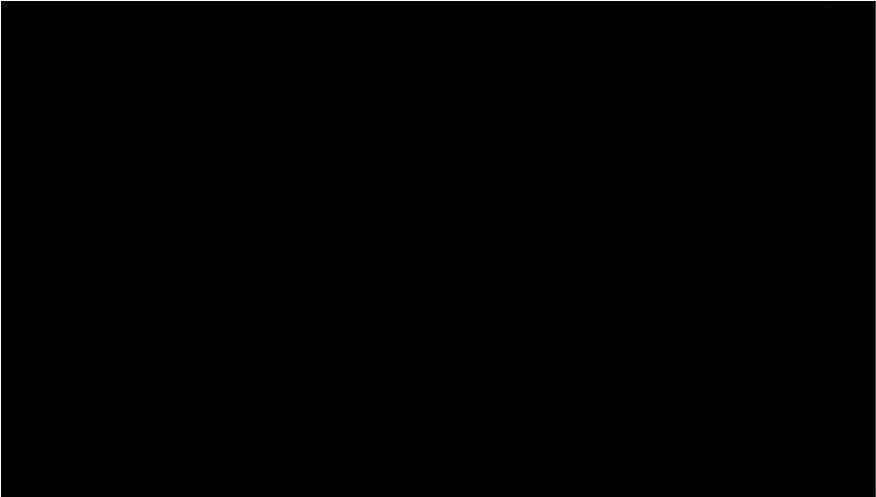
**Jurisdiction of County Courts under "Metropolitan Building Act, 1855."**

"The Metropolitan Building Act, 1855," (18 & 19 Vict. c. 122), which by section 4 is made to extend to all places within the limits of the Metropolis, as defined by 18 & 19 Vict. c. 120, constitutes the County Court as the tribunal for the decision of certain cases mentioned in the Act. The jurisdiction which the Act so confers upon County Courts is either (I.) Appellate or (II.) Original.

**(I.) The appellate jurisdiction.**

First, there exists in the County Courts an appellate jurisdiction derived under the following enactment :—

"The Metropolitan Building Act, 1855," provides as follows :—



“work, and the time at which such work is proposed to be commenced : 18 & 19 Vict.  
c. 122, s. 85.

- “(3.) No building owner shall exercise any right hereby given to him in such manner or at such time as to cause unnecessary inconvenience to the adjoining owner :
- “(4.) Upon the receipt of such notice the adjoining owner may require the building owner to build or may himself build on any such party structure any works to the construction of which he is hereinbefore mentioned to be entitled :
- “(5.) Any requisition so made by an adjoining owner shall be in writing or printed, and shall be delivered personally to the building owner within one month after the date of the notice being given by him, or be sent by post in a registered letter addressed to him at his last known place of residence : It shall specify the works required by the adjoining owner for his convenience, and shall, if necessary, be accompanied with explanatory plans and drawings :
- “(6.) If either owner does not, within fourteen days after the delivery to him of any notice or requisition, express his consent thereto, he shall be considered as having dissented therefrom, and thereupon a difference shall be deemed to have arisen between the building owner and the adjoining owner :
- “(7.) In all cases not hereby specially provided for where a difference arises between a building owner and adjoining owner in respect of any matter arising under this Act, unless both parties concur in the appointment of one surveyor they shall each appoint a surveyor, and the two surveyors so appointed shall select a third surveyor, and such one surveyor, or three surveyors, or any two of them, shall settle any matter in dispute between such building and adjoining owner, with power by his or their award to determine the right to do, and the time and manner of doing any work, and generally any other matter arising out of or incidental to such difference ; but any time so appointed for doing any work shall not commence until after the expiration of such period of three months, as is hereinbefore mentioned :
- “(8.) Any award given by such one surveyor, or by such three surveyors, or any two of them, shall be

- “conclusive, and shall not be questioned in any  
“Court, with this exception, that either of the  
“parties to the difference may appeal therefrom  
“to the County Court within fourteen days from  
“the date of the delivery of any such award as  
“aforesaid, and such County Court may, subject  
“as hereinafter mentioned, rescind or modify  
“the award so given in such manner as it  
“thinks just :
- “(9.) If either party to the difference makes default in  
“appointing a surveyor for ten days after notice  
“has been given to him by the other party in  
“manner aforesaid to make such appointment,  
“the party given the notice may make the  
“appointment in the place of the party so  
“making default :
- “(10.) The costs incurred in obtaining any such award as  
“aforesaid shall be paid by such party as such  
“one surveyor, or three surveyors, or any two of  
“them, may determine :
- “(11.) If the appellant from any such award as aforesaid,  
“on appearing before the County Court, declares  
“his unwillingness to have the matter decided  
“by such Court, and proves to the satisfaction  
“of the Judge of such Court that in the event  
“of the matter being decided against him he  
“will be liable to pay a sum, exclusive of costs,  
“exceeding fifty pounds, and gives security, to  
“be approved by such Judge, duly to prosecute  
“his appeal and to abide the event thereof, all  
“proceedings in the County Court shall there-

“(12.) If the parties to any such action agree as to the facts, a special case may be stated for the opinion of any such superior Court as aforesaid, and any case so stated may be brought before the Court in like manner and subject to the same incidents in and subject to which other special cases are brought before such Court, or as near thereto as circumstances admit; and any costs that may have been incurred in the County Court by the parties to such action as is mentioned in this section shall be deemed to be costs incurred in such action, and be payable accordingly.”—18 & 19 Vict. c. 122, s. 85.

It is to be noticed that the right of appealing to the County Court, under the above section, must be exercised *within 14 days from the date of the delivery of the award complained of* (b).

Secondly, there also exists in the County Court an original jurisdiction. This jurisdiction is, moreover, itself twofold.

The first portion of the original jurisdiction of the County Court enables it to assess the amount of security which must be given to his neighbour by a person intending to build (usually and shortly called a “Building owner”) before commencing operations. This jurisdiction is derived from the following section of the Act :—

“Any adjoining owner may, if he thinks fit, by notice in writing given by himself or his agent, require the building owner, before commencing any work which he may be authorised by this Act to execute, to give such security as may be agreed upon, or in case of difference may be settled by the Judge of the County Court, for the payment of all such costs and compensation in respect of such work as may be payable by such building owner.”—18 & 19 Vict. c. 122, s. 87.

The second branch of the original jurisdiction of the County Court under the Act enables it to give consent to building operations where there exists no owner capable of giving such consent. This power is derived from the following section of the Act :—

“Where any consent is required to be given or any other thing to be done by any owner in pursuance of this Act, if there is no owner capable of giving such consent or of doing such thing, and no person empowered by this Act to give such consent or to do such thing on behalf of such owner, or if any owner so capable, or any person so empowered, cannot be found, the Judge of the County Court shall have

(II.) Original jurisdiction.

(a.) To settle security to be given by a building owner.

*The Metropolitan Building Act, 1855, s. 87.*

(b.) To give consent to building operations where no capable owner exists.

Consent, how given on behalf of person not to be found.  
18 & 19 Vict. c. 122, s. 96.

(b) Subsect. 8, *supra*, p. 962.

“power to give such consent or do or cause to be done such thing on behalf of such owner, upon such terms and subject to such conditions as he may think fit, having regard alike to the nature and purpose of the subject matter in respect of which such consent is to be given, and to the fair claims of the parties on whose behalf such consent is to be given; and such Judge shall have power to dispense with the service of any notice which would otherwise be required to be served.”—18 & 19 Vict. c. 122, s. 96.

In what district proceedings should be taken.

*The Metropolitan Building Act, 1855, s. 99.*

As regards the district in which proceedings under the Act should be taken, it is enacted as follows:—

“Whenever any thing is hereby authorised to be done by a County Court it may be done as follows; that is to say, if such thing arises in respect of any structure or other subject matter situate within the city of London or the liberties thereof, by the Sheriffs Court established by a local Act passed in the eleventh year of the reign of Her Majesty, Chapter Seventy-one, intituled ‘An Act for the more easy Recovery of Small Debts and Demands within the City of London or the Liberties thereof,’ and if such thing arises in respect of any structure or other subject matter situate elsewhere, by the County Court having jurisdiction within the district in which such structure or other subject matter is situate.”—18 & 19 Vict. c. 122, s. 99.

Practice in proceedings.

*The Metropolitan Building Act, 1855,*

The practice in proceedings under the Act may under Order XL. of the Rules of 1875, be by action or by petition (*bb*). The following enactment relates to this subject:—

• “Proceedings in any County Court in respect of any matter arising under this Act shall be conducted in the same manner as proceedings are conducted in any case within the ordinary jurisdiction of such Court or as near thereto as circumstances

On a trial under section 85 of the Act (already set out in full (c)) of an appeal for an award it will be seen on reference to the section, that if the appellant declares his unwillingness to have the matter decided by the County Court, and prove to the satisfaction of the Judge that, in the event of the matter being decided against him, he will be liable to pay a sum, exclusive of costs, exceeding £50, and gives security, to be approved by such Judge, duly to prosecute his appeal and abide the event thereof, all proceedings in the County Court shall thereupon be stayed; and it shall be lawful for such appellant to bring an action in the High Court against the other party to the difference in respect of which the award appealed from is made (d).

Power in proceeding on appeal from an award to oust County Court jurisdiction.

By a section of the Act already cited, a general power is conferred upon the County Courts, in cases under the Act, to award or refuse costs according to circumstances, and to settle the amount thereof (e).

Costs.

(c) *Ante*, pp. 960—963.

(d) 18 & 19 Vict. c. 122, s. 85, *ante*, pp. 960—963.

(e) 18 & 19 Vict. c. 122, s. 100, *ante*, pp. 960—963.

## BOOK V.—DIVISION III.

### STATUTES CONTAINING SPECIAL PROVISIONS AS TO THE SETTLEMENT OF DISPUTES.

#### CHAPTER III.

##### PROCEEDINGS UNDER THE ATTORNEYS' AND SOLICITORS' ACT, 1870.

Objects of  
"The At-  
torneys' and  
Solicitors'  
Act, 1870."

IN the year 1870 an Act of Parliament was passed (33 & 34 Vict. c. 28) to amend the law relating to attorneys and solicitors. It would be impossible to summarise here the whole of the contents of the Act, but those which will be referred to in County Court practice are as follow.

Short title.

A short title to the Act is provided by the following section :—

*The Attor-  
neys' and  
Solicitors'  
Act, 1870.*  
s. 1.

"This Act may be cited as 'The Attorneys' and Solicitors' Act,' 1870."—33 & 34 Vict. c. 28, s. 1.

Interpretation  
clause.

The Act also contains the following interpretation clause :—

*Attorneys'  
and Solici-  
tors' Act,*  
1870, s. 3.

"In the construction of this Act, unless where the context otherwise requires, the words following have the significations hereinafter respectively assigned to them ; that is to say,

"The words 'attorney or solicitor' mean an attorney,

"solicitor, or proctor, qualified according to the pro-

"visions of the Acts for the time being in force,

"relating to the admission and qualification of attor-

"neys, solicitors, or proctors : (a)

" 'Person' includes a corporation :

" 'Client' includes any person who, as a principal or on

"behalf of another person, retains or employs, or is

"about to retain or employ, an attorney or solicitor,

"and any person who is or may be liable to pay the

"bill of an attorney or solicitor for any services, fees,

"costs, charges, or disbursements."—33 & 34 Vict.

c. 28, s. 3.

(a) "The Supreme Court of Judicature Act, 1873," provides that Attorneys and Proctors are to be called Solicitors of Supreme Court (sect. 87, amended by 38 & 39 Vict. c. 77, s. 14).



By subsequent sections of the Act an agreement as to the solicitor's remuneration, which was formerly illegal, is rendered valid if it be in writing and allowed by a taxing master. Such sections are as follow :—

"An attorney or solicitor may make an agreement in writing with his client respecting the amount and manner of payment for the whole or any part of any past or future services, fees, charges, or disbursements in respect of business done or to be done by such attorney or solicitor, whether as an attorney or solicitor or as an advocate or conveyancer, either by a gross sum, or by commission or per-centage, or by salary or otherwise, and either at the same or at a greater or at a less rate as or than the rate at which he would otherwise be entitled to be remunerated, subject to the provisions and conditions in this part of this Act contained : Provided always, that when any such agreement shall be made in respect of business done or to be done in any action at law or suit in equity, the amount payable under the agreement shall not be received by the attorney or solicitor until the agreement has been examined and allowed by a taxing officer of a Court having power to enforce the agreement ; and if it shall appear to such taxing officer that the agreement is not fair and reasonable he may require the opinion of a Court or a Judge to be taken thereon by motion or petition, and such Court or Judge shall have power either to reduce the amount payable under the agreement or to order the agreement to be cancelled and the costs, fees, charges, and disbursements in respect of the business done to be taxed in the same manner as if no such agreement had been made."—33 & 34 Vict. c. 28, s. 4.

"Such an agreement shall not affect the amount of, or any rights or remedies for the recovery of, any costs recoverable from the client by any other person, or payable to the client by any other person, and any such person may require any costs payable or recoverable by him to or from the client to be taxed according to the rules for the time being in force for the taxation of such costs, unless such person has otherwise agreed : Provided always, that the client who has entered into such agreement shall not be entitled to recover from any other person under any order for the payment of any costs which are the subject of such agreement more than the amount payable by the client to his own attorney or solicitor under the same."—33 & 34 Vict. c. 28, s. 5.

"Such an agreement shall be deemed to exclude any further claim of the attorney or solicitor beyond the terms of the agreement in respect of any services, fees, charges, or disbursements in relation to the conduct and completion of the business in reference to which the agreement is made except such services, fees, charges, or disbursements, if any, as are

Solicitor may make written agreement with his client as to remuneration.

A solicitor may make a written agreement with a client as to charges, but amount agreed not to be paid till agreement allowed by a taxing officer.

*Attorneys' and Solicitors' Act, 1870, s. 4.*

And the rights of third parties shall not be affected by such agreement.

*Id.*, s. 5.

But all claims by solicitor beyond those agreed for to be excluded.

*Id.*, s. 6.

Reservation  
of respon-  
sibility for  
negligence.  
*Id.*, s. 7.

Prohibition  
of certain  
stipulations.  
*Id.*, s. 11.

Not to give  
validity to  
contracts  
which may  
be void in  
bankruptcy.  
*Id.*, s. 12.

Jurisdiction  
of County  
Courts over  
agreements  
under Act.  
(1.) Juris-  
diction to  
enforce agree-  
ments under  
Act.

“expressly excepted by the agreement.”—33 & 34 Vict. c. 28, s. 6.

“A provision in any such agreement that the attorney or solicitor shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as such attorney or solicitor, shall be wholly void.”—33 & 34 Vict. c. 28, s. 7.

“Nothing in this Act contained shall be construed to give validity to any purchase by an attorney or solicitor of the interest, or any part of the interest, of his client in any suit, action, or other contentious proceeding to be brought or maintained, or to give validity to any agreement by which an attorney or solicitor retained or employed to prosecute any suit or action, stipulates for payment only in the event of success in such suit, action, or proceeding.”—33 & 34 Vict. c. 28, s. 11.

“Nothing in this Act contained shall give validity to any disposition, contract, settlement, conveyance, delivery, dealing, or transfer, which may be void or invalid against a trustee or creditor in bankruptcy, arrangement, or composition, under the provisions of the laws relating to bankruptcy.”—33 & 34 Vict. c. 28, s. 12.

Bargain between solicitors and their clients having been thus made legal, the Act goes on to give the Courts jurisdiction either (1) To examine and enforce such agreements, or (2) To set aside or re-open such agreements.

First, jurisdiction to examine and enforce agreements under the Act is conferred by the following enactment :—

“No action or suit shall be brought or instituted upon any such agreement ; but every question respecting the validity or effect of any such agreement may be examined and deter-

"such manner and subject to such conditions, if any, as to the costs of such motion or petition as such Court or Judge may think fit; but if the terms of such agreement shall not be deemed by the Court or Judge to be fair and reasonable, the same may be declared void, and the Court or Judge shall thereupon have power to order such agreement to be given up to be cancelled, and may direct the costs, fees, charges, and disbursements incurred or chargeable in respect of the matters included therein to be taxed in the same manner and according to the same rules as if such agreement had not been made; and the Court or Judge may also make such order as to the costs of and relating to such motion or petition, and the proceedings thereon, as to the said Court or Judge may seem fit."—33 & 34 Vict. c. 28, s. 9.

Secondly, power to set aside an agreement made under the Act in cases where such agreement appears improper, exists as follows :—

In cases where the money due from the client under the Act has not been paid, and proceedings are taken under section 8, power to set aside such agreement is, it will be noted, expressly given by the latter portion of section 9 (just set out).

But in cases where payment has been made under the agreement of the amount due thereunder, power to reopen the agreement is derived from the following section :—

"When the amount agreed for under any such agreement has been paid by or on behalf of the client, or by any person chargeable with or entitled to pay the same, any Court or Judge having jurisdiction to examine and enforce such an agreement may, upon application by the person who has paid such amount, within twelve months after the payment thereof, if it appears to such Court or Judge that the special circumstances of the case require the agreement to be re-opened, re-open the same, and order the costs, fees, charges, and disbursements to be taxed, and the whole or any portion of the amount received by the attorney or solicitor to be repaid by him, on such terms and conditions as to the Court or Judge may seem just.

"Where any such agreement is made by the client in the capacity of guardian, or of trustee under a deed or will, or of committee of any person or persons whose estate or property will be chargeable with the amount payable under such agreement, or with any part of such amount, the agreement shall before payment be laid before the taxing officer of a Court having jurisdiction to enforce the agreement, and such officer shall examine the same, and may disallow any part thereof, or may require the direction of the Court or a Judge to be taken thereon by motion or petition; and if in any such case the client pay the whole or any part of the amount payable under the agreement, without the previous allowance of such

(2.) Jurisdiction to set aside agreement under Act.

—Where nothing paid.

—Where payments have been made.

In special cases.

*The Attorneys' and Solicitors' Act, 1870, s. 10.*

“ officer or Court or Judge as aforesaid, he shall be liable at any time to account to the person whose estate or property is charged with the amount paid, or with any part thereof for the amount so charged ; and if in any such case the attorney or solicitor accept payment without such allowance, any Court which would have had jurisdiction to enforce the agreement may, if it think fit, order him to refund the amount so received by him under the agreement.”—33 & 34 Vict. c. 28, s. 10.

Jurisdiction of the County Court limited to £50.

It is to be noticed that, by this section, the jurisdiction of the County Court, under “ The Attorneys and Solicitors Act, 1870,” arises where the amount payable under the agreement does not exceed £50, but that, even then, the County Courts have no jurisdiction where any part of the business, in respect of which the agreement is made, arose in any Court other than a County Court.

Parties.

As regards the parties to proceedings under the Act, the following points require notice.

—To application to enforce or set aside agreement.

Applications to have an agreement enforced or set aside may be made by “ *any person, or the representative of any person, a party to such agreement, or being or alleged to be liable to pay, or being or claiming to be entitled to be paid, the costs, fees, charges, or disbursements in respect of which the agreement is made* ” (b).

—In cases where the solicitor dies.

Moreover, application also may be made to the Court in case of the death of a solicitor who has entered into an agreement under the Act *after* something has been done by him under it, but *before* the agreement has been *completely performed* by him.

*The Attorneys' and Solicitors' Act, 1870,*

“ Where an attorney or solicitor has made an agreement with his client in pursuance of the provisions of this Act, and any thing has been done by such attorney or solicitor under the agreement, and before the agreement has been completely

An application, under section 10 of the Act (*c*), to *re-open* an agreement, must be made *within twelve months after payment has been made under it* (*d*).

Within what time application must be made.

Proceedings under the Act cannot be by way of action or suit,—for section 8 (*e*) is explicit that “*no action or suit shall be brought or instituted upon any such agreement.*” Therefore, applications to the County Court under the Act will be by motion or petition.

Practice on proceedings.

So much therefore of Order XL. of “The County Court Rules of 1875,” as relates to actions, is inapplicable to cases under this Act. The proceedings should be by way of petition. And the practice on such petition can be ascertained from the introductory chapter to the present Book of this Work (*f*).

The proceedings at the trial of a petition under the Act require but brief notice.

Trial.

Where the application is to enforce, or, on the other hand, to set aside an agreement, the Court, if it considers that the agreement is *in all respects fair and reasonable between the parties*, will make an order enforcing it in such manner and subject to such conditions, if any, as to the costs of the motion or petition as the Court shall think fit (*g*). But, if the agreement is *not deemed fair and reasonable*, the Court will declare it *void*, and may order such agreement to be given up to be cancelled, and may direct the costs, charges, and disbursements incurred or chargeable in respect of the matters included in such agreement to be taxed (*h*).

—Of petition to enforce or set aside agreement.

With regard to applications to *re-open* agreements, if the Court accede to the application, it may order the costs, fees, charges, and disbursements to be taxed, and the whole or any portion of the amount received by the attorney or solicitor to be repaid by him, on such terms and conditions as to the Court or Judge may seem just (*i*).

—Of petition to re-open agreement.

The costs of and relating to any motion or petition under the Act, and the proceedings thereon, may be dealt with by the order of the Court to which the application is made (*k*).

Costs.

(*c*) *Ante*, pp. 969, 970.

(*d*) See sect. 10, *ante*, pp. 969, 970.

(*e*) *Ante*, p. 968.

(*f*) See *ante*, pp. 886 *et seq.*

(*g*) 33 & 34 Vict. c. 28, s. 9, *ante*, pp. 968, 969.

(*h*) *Ib.*

(*i*) 33 & 34 Vict. c. 28, s. 10, *ante*, pp. 969, 970.

(*k*) 33 & 34 Vict. c. 28, s. 9, *ante*, pp. 968, 969.

## BOOK V.—DIVISION III.

### PROCEEDINGS UNDER SCHEDULES PROVIDING FOR THE SETTLEMENT OF DISPUTES.

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#### CHAPTER IV.

##### JURISDICTION AND PROCEEDINGS UNDER "THE BUILDING SOCIETIES ACT, 1874."

"The Building Societies Act, 1874."

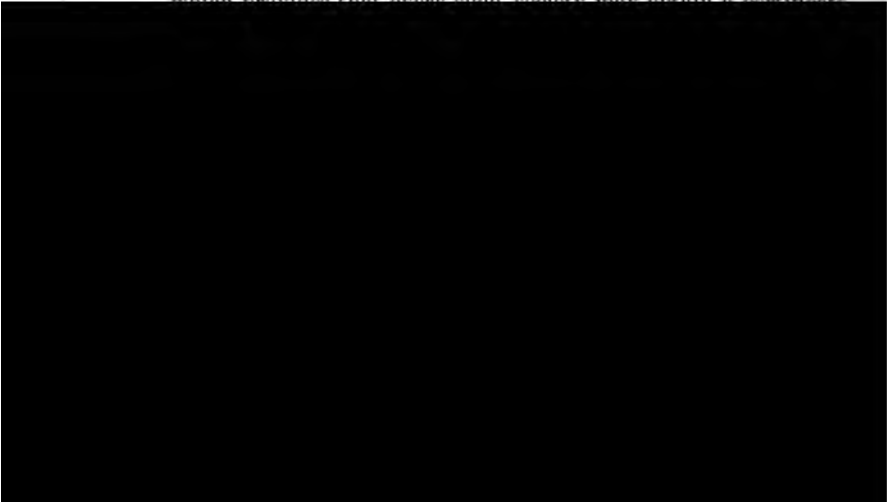
"THE Building Societies Act, 1874" (37 & 38 Vict. c. 42), consolidates and amends the law relating to building societies, and repeals 6 & 7 Will. IV. c. 32 ("An Act for the Regulation of Benefit Building Societies") (a).

What societies are within the Act.

It is necessary to give a brief outline of the societies which are societies within the enactment in question.

(1.) Societies certified under the repealed Act.]

In the first place, it was provided by section 8 of "The Building Societies Act, 1874," that every society, the rules of which have been certified under the repealed Act, should be deemed to be a society under the new Act and might obtain a certificate of incorporation thereunder. This section has, however, been repealed by "The Building Societies Act, 1875" (b), which provides that every such society may obtain a certificate



security of freehold, copyhold, or leasehold estate, by way of mortgage (e). The liability of a member of a society under the Act is limited to the amount actually paid or in arrear on his share, where no advance has been made upon it, and to the amount payable thereon under any mortgage or other security, or under the rules of the society, in the case of any share upon which an advance has been made (f).

The rules of a society are binding upon the members and officers thereof, and on persons claiming on account of a member, or under the rules; and all such persons are presumed to have full notice of such rules (g).

Rules of a society binding.

The following section of the Act authorises certain fees to be taken under it :—

Fees under the Act.

“One of Her Majesty’s Principal Secretaries of State may from time to time make regulations respecting the fees, if any, to be paid for the transmission, registration, and inspection of documents under this Act, and generally for carrying this Act into effect. The registrar shall give his certificates in the forms contained in the schedule to this Act respectively.”—37 & 38 Vict. c. 42, s. 44.

*The Building Societies Act, 1874, s. 44.*

With regard to parties to proceedings under “The Building Societies Act, 1874,” it is to be noticed that every society incorporated under this Act sues and is sued in its registered name (h). Moreover, where a society changes its name, in manner pointed out by the Act, it is expressly provided that such change of name shall not affect any right or obligation of the society, or of any member thereof, or other person concerned (i).

Parties to proceedings.

The Act contains the following directions as to the district in which proceedings under it are to be taken :—

“The Court in this Act means,

In what district proceedings under the Act should be taken.

“In England, the County Court of the district in which the chief office or place of meeting for the business of the society is situate.”—37 & 38 Vict. c. 42, s. 4.

*The Building Societies Act, 1874, s. 4.*

With regard to proceedings under “The Building Societies Act, 1874,” it is, perhaps, a little doubtful whether “The County Court Rules, 1875,” are made applicable to such proceedings by Order XL. (k). For that order professes only to regulate proceedings in Acts not previously referred to in the said rules. And “The Building Societies Act, 1874,” is mentioned in the preceding order (Order XXXIX.), which deals with the winding up of building societies and companies. But “The County Court Rules” contain no direction whatever as to

Rules of practice.

(e) 37 & 38 Vict. c. 42, s. 13.

(f) 37 & 38 Vict. c. 42, s. 14.

(g) 37 & 38 Vict. c. 42, s. 21.

(h) 37 & 38 Vict. s. 9 & s. 27.

(i) See sect. 22 of the Act.

(k) Set out *ante*, p. 887.

- proceedings under “The Building Societies Act, 1874,” save such proceedings as are winding-up proceedings.
- Proceedings.** It would, therefore, appear that all proceedings other than those for winding up are regulated by Order XL. (1), and may be instituted either by action or by petition.
- Court fees.** With regard to fees payable in the County Court in proceedings under “The Building Societies Act, 1874,” they are the same as in ordinary cases (*m*).
- Documents purporting to be signed by registrar to be evidence.** The following sections of “The Building Societies Act, 1874,” provides that documents purporting to be signed by the registrar shall be received in evidence :—
- The Building Societies Act, 1874, s. 20.* “Any certificate of incorporation or of registration, or other document relating to a society under this Act, purporting to be signed by the registrar, shall, in the absence of any evidence to the contrary, be received by the Court, and by all Courts of law and equity and elsewhere, without proof of the signature ; and a printed copy of the rules of a society, certified by the secretary or other officer of the society to be a true copy of its registered rules, shall, in the absence of any evidence to the contrary, be received as evidence of the rules.” —37 & 38 Vict. c. 42, s. 20.
- Certain documents are also, by the following section, made admissible in evidence without being stamped :—
- And to be exempt from stamp duty. “No rules of any society under this Act, nor any copy thereof, nor any power, warrant, or letter of attorney granted or to be granted by any person as trustee for the society for the transfer of any share in the public funds standing in his name, nor any receipts given for any dividend in any public stock or fund, or interest of exchequer bills, nor any receipt, nor any entry in any book of receipt, for money deposited in the funds of the society, nor for any money received by any



societies under the Act to render accounts and deliver over money or property (*n*) ; (2.) To enforce the decision of arbitrators (*o*) ; (3.) To hear and determine disputes in certain specified cases (*p*) ; (4.) To wind up societies under the Act (*q*).

County Court under "The Building Societies Act, 1874."

#### SECTION I.—PROCEEDINGS TO COMPEL OFFICERS TO RENDER ACCOUNTS AND TO DELIVER OVER MONEY OR PROPERTY.

The position of officers of building societies which are subject to the Act, and the jurisdiction of the County Court over such officers, is derived from the following sections :—

" Every officer of a society under this Act having the receipt or charge of any money belonging to the society shall, before taking upon himself the execution of his office, become bound with one sufficient surety at the least, in a bond according to the form set forth in the schedule to this Act, or give the security of a guarantee society, or such other security as the society direct, in such sum as the society require, conditioned for rendering a just and true account of all moneys received and paid by him on account of the society, and for payment of all sums of money due from him to the society, at such times as its rules appoint, or as the society require him to do so."—37 & 38 Vict. c. 42, s. 23.

Jurisdiction of County Court to compel accounting or delivery over of property or money by officers of Building Societies.

*The Building Societies Act, 1874,* s. 23.

" Every such officer, his executors or administrators, shall, upon demand made, or notice in writing given or left at his last or usual place of residence, give in his account as may be required by the board of directors or committee of management of the society, to be examined and allowed or disallowed by them, and shall, on the like demand or notice, pay over all the moneys remaining in his hands, and deliver all securities and effects, books, papers, and property of the society in his hands or custody, to such person as the society appoint ; and in case of any neglect or refusal to deliver such account, or to pay over such moneys, or to deliver such securities and effects, books, papers, and property, in manner aforesaid, the society may sue upon the bond, or may apply to the Court, who may proceed thereupon in a summary way, and make such order thereon as to the Court in its discretion shall seem just, which order shall be final and conclusive."—37 & 38 Vict. c. 42, s. 24.

*The Building Societies Act, 1874,* s. 24.

(*n*) Sects. 23 and 24 set out *supra*.

(*o*) Sect. 34, set out *post*, pp. 976, 977.

(*p*) Sect. 35, set out *post*, pp. 977, 978.

(*q*) Sect. 32. See *post*, pp. 979 *et seq.*

Construction  
of above  
sections.

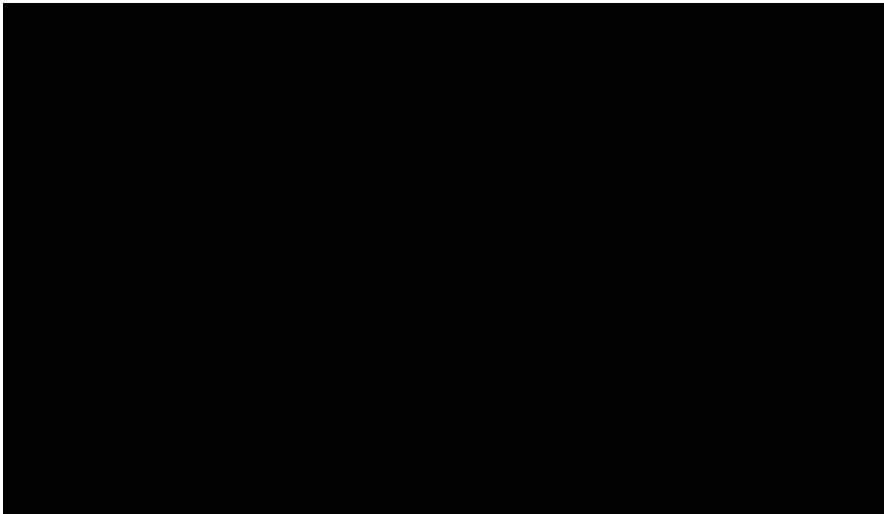
The above sections are similar to section 20 of "The Friendly Societies Act, 1875," and to section 13 of "The Industrial and Provident Societies Act, 1876," on which some observations will be found on a later page (*s*).

Practice.

As mentioned in the introductory remarks at the head of this Chapter Order XL, probably is, strictly speaking, applicable to all proceedings under "The Building Societies Act, 1874." And, if this be so, it follows that proceedings under it may be taken either by plaint and summons, or by petition. The mode of conducting proceedings in either of these modes can be ascertained from the Introductory Chapter to the present Book of this Work.

Inasmuch, however, as sections 23 and 24 of "The Building Societies Act, 1874," are precisely similar to section 20 of "The Friendly Societies Act, 1875," it will be prudent in proceedings under "The Building Societies Act" against officers of building societies to follow the rules laid down with regard to corresponding proceedings against officers of friendly societies (*t*) and described in a subsequent page (*u*). If this course be adopted the proceedings will be commenced by plaint and summons: the summons or particulars annexed thereto, will state the nature of the act required to be done (*x*), and (if property be required to be delivered up) the nature of such property (*y*). The subsequent proceedings in the action will, under Order XXXVIII. set out on a later page (*z*), be the same as in ordinary cases. The form of order at the hearing can be adapted from that under "The Friendly Societies Act" (*a*).

## SECTION II.—PROCEEDINGS TO ENFORCE THE DECISION OF ARBITRATORS.



“ each such case of dispute, the number of the said arbitrators  
 “ and mode of ballot being determined by the rules of the  
 “ society ; the names of such arbitrators shall be duly entered  
 “ in the minute book of the society, and, in case of the death  
 “ or refusal or neglect of any of the said arbitrators to act, the  
 “ society, at a general meeting, shall name and elect an  
 “ arbitrator to act in the place of the arbitrator dying, or  
 “ refusing or neglecting to act ; and whatever award shall be  
 “ made by the arbitrators or the major part of them, according  
 “ to the true purport and meaning of the rules of the society,  
 “ shall determine the dispute ; and should either of the parties  
 “ to the dispute refuse or neglect to comply with or conform  
 “ to such award within a time to be limited therein, the Court,  
 “ upon good and sufficient proof being adduced of such award  
 “ having been made, and of the refusal of the party to comply  
 “ therewith, shall enforce compliance with the same upon the  
 “ petition of any person concerned. Where the parties to any  
 “ dispute arising in a society under this Act agree to refer the  
 “ dispute to the registrar, or where the rules of the society  
 “ direct disputes to be referred to the registrar, the award of  
 “ the registrar shall have the same effect as that of arbitrators.”  
 —37 & 38 Vict. c. 42, s. 34.

Before the Court can act under this section, it is necessary  
 (1.) that a valid award shall have been made ; and (2.) that  
 the party has refused to comply with the award. And it is  
 specially required that the award itself shall limit the time for  
 compliance with its directions.

Construction  
 of above  
 section.

Proceedings under the above section should be commenced  
 by petition. The mode of instituting and conducting such  
 proceedings can be sufficiently ascertained from the Introductory  
 Chapter to the present Book (*bb*).

Practice.

### SECTION III.—PROCEEDINGS TO HEAR AND DETERMINE DISPUTES UNDER “THE BUILDING SOCIETIES ACT.”

Jurisdiction to, in certain specified cases, determine disputes  
 under “The Building Societies Act, 1874,” is now possessed by  
 the County Courts by virtue of the following enactment :—

Jurisdiction of  
 County Court  
 to decide dis-  
 putes under  
 “The Build-  
 ing Societies  
 Act.”  
*The Build-  
 ing Societies  
 Act, 1874,*  
*s. 35.*

“The Court may hear and determine a dispute in the follow-  
 ing cases :

- “ 1. If it shall appear to the Court, upon the petition  
 “ of any person concerned, that application has  
 “ been made by either party to the dispute to the  
 “ other party, for the purpose of having the dispute  
 “ settled by arbitration under the rules of the  
 “ society, and that such application has not within  
 “ forty days been complied with, or that the arbi-

(*bb*) *Ante*, pp. 886 *et seq.*

“trators have refused or for a period of twenty-one days have neglected to make any award.

“2. Where the rules of the society direct disputes to be referred to the Court or to Justices.”—37 & 38 Vict. c. 42, s. 35.

Construction  
of above  
section.

We have already seen (*b*), that the Act expressly provides that the rules shall specify whether disputes shall be settled by reference to the Court, or to the registrar, or to arbitration. But even where the rules of the society do not direct disputes to be referred to the Court or to Justices, the County Court has jurisdiction in the cases mentioned in sub-section 1 of section 35.

Practice.

The practice under the above section varies according to whether the proceedings are under sub-section 1 or under sub-section 2 of the above enactment.

—Under sub-  
section 1.

Proceedings under sub-section 1 of section 30 of “The Building Societies Act, 1872,” are expressly directed to be commenced “by petition.” The practice on such a petition can be ascertained by reference to the Introductory Chapter of this Book (*c*), as supplemented by Order XXXVIII. (*d*), by which it is expressly directed that the rules of practice in ordinary cases shall apply to points as to which there exists no express direction.

—Under sub-  
section 2.

In proceedings under section 35, sub-section (2) (*e*), the dispute should, it is submitted, be referred by action commenced by plaint and summons in the ordinary way, this being the course prescribed in like cases arising under “The Friendly Societies Act, 1875” (*f*). And the summons or the particulars annexed should state correctly the nature of the dispute referred and the relief which the plaintiff claims (*g*).

No appeal

The decision of the County Court under section 35 is also

“grant to either party to the dispute such discovery, as to documents and otherwise, as might now be granted by any Court of law or equity, such discovery to be made on behalf of the society by such officer of the society as the arbitrators, registrar, or Court may determine.”—37 & 38 Vict. c. 42, s. 36.

#### SECTION IV.—PROCEEDINGS TO WIND UP A BUILDING SOCIETY.

“The Building Societies Act” confers upon the County Court jurisdiction to wind up any building society which is within the Act. The following is the section by which such jurisdiction is created and defined :—

“A society under this Act may terminate or be dissolved—

“1. Upon the happening of any event declared by its rules  
“to be the termination of the society.

“2. By dissolution in manner prescribed by its rules.

“3. By dissolution with the consent of three-fourths of the  
“members, holding not less than two-thirds of the  
“number of shares in the society, testified by their  
“signatures to the instrument of dissolution. The  
“instrument of dissolution shall set forth—

“ (a.) the liabilities and assets of the society in  
“detail ;

“ (b.) the number of members, and the amount  
“standing to their credit in the books of  
“the society ;

“ (c.) the claims of depositors and other creditors,  
“and the provision to be made for their  
“payment ;

“ (d.) the intended appropriation or division of  
“the funds and property of the society ;

“ (e.) the names of one or more persons to be  
“appointed trustees for the special pur-  
“pose, and their remuneration.

“Alterations in the instrument of dissolution may be  
“made with the like consent, testified in the same  
“manner. The instrument of dissolution and all altera-  
“tions therein shall be registered in the manner pro-  
“vided for the registration of rules, and shall be  
“binding upon all the members of the society.

“4. By winding up, either voluntarily under the supervision  
“of the Court or by the Court, if the Court shall so  
“order, on the petition of any member authorised by  
“three-fourths of the members present at a general  
“meeting of the society specially called for the pur-  
“pose to present the same on behalf of the society,

Jurisdiction  
as to the  
winding up  
of building  
societies.

*The Build-  
ing Societies  
Act, 1874,  
s. 32.*

“ or on the petition of any judgment creditor for not less than fifty pounds, but not otherwise. General orders for regulating the proceedings of the Court under this section may be from time to time made by the authority for the time being empowered to make general orders for the Court.

“ Notice of the commencement and termination of every dissolution or winding up shall be sent to the registrar, and registered by him.”—37 & 38 Vict. c. 42, s. 32.

*Seemle that a building society can be wound up voluntarily or under the supervision of the Court, as well as compulsorily.*

There are, as will be seen in the Chapter on Winding up (*h*), in general three modes in which a company or society can be wound up; viz., (1) by compulsory winding up; (2) by voluntary winding up; (3) by a voluntary winding up under the supervision of the Court. It is to be noticed that the above section provides that a building society may be wound up “ either voluntarily under the supervision of the Court or by the Court.”

Still it is perhaps somewhat doubtful whether building societies can be wound up voluntarily. A recent writer on public companies has expressed the opinion that, owing to the language adopted by the Legislature in framing section 32 of “ The Building Societies Act, 1874 ” (*i*), societies which are within that Act can only be wound up by the Court. His remarks on this section are as follows:—

*Opinion of Mr. Buckley.*

“ Upon the wording of this clause it would seem that the words ‘ voluntarily under the supervision of the Court ’ cannot be read disjunctively, and yet if they are not, there does not appear to be any power for such a society to wind up voluntarily in the sense in which that term is used in the Companies Acts, and if that be so, a supervision order, which is an order to continue a voluntary winding up, is impossible. Sub-section

Now it is submitted that the construction which is here contended for is one which is not justified by the language of section 32 of "The Building Societies Act, 1874." For, as we have seen, that enactment provides that a building society may be dissolved "*by winding up either voluntarily under the supervision of the Court or by the Court.*" And it is contended that these words must be read so as to give effect, if possible, to every word used, and that it must be presumed that the Legislature did *not* intend what would be absurd. Now, according to Mr. Buckley, the above words mean that building societies can be wound up in two ways only, namely, *either* (1.) Voluntarily under the supervision of the Court, *or* (2.) By the Court. But, he says, a voluntary winding up, subject to the supervision of the Court, *necessarily* presupposes a voluntary winding up. And as the above enactment does not enable a building society to be wound up voluntarily, therefore, it follows that the words "*voluntarily under the supervision of the Court*" have no meaning, and so a building society can only be wound up in *one* way, namely, by the Court. It is submitted that the construction here contended for is not a reasonable one, for it violates two canons of construction, namely, first, that you must, if possible, give effect to every word used and, secondly, that you must presume that the Legislature did not intend an absurdity. Now it is, on the other hand, submitted that the true construction of the words "*either voluntarily under the supervision of the Court or by the Court*" is that they must be read *disjunctively*, as though there were a comma after the word *voluntarily*, or else as though the word "*it*" were there instead of a comma. But, even on the assumption that the words in question cannot, as Mr. Buckley contends, be read *disjunctively*, it is submitted that his construction of the Act is clearly wrong. For, it is submitted that the words "*voluntarily under the supervision of the Court*" necessarily contemplate a voluntary winding up of a building society and confer the right of winding up in that way.

Reasons for a contrary view to Mr. Buckley.

Proceedings to wind up societies under "The Building Societies Act, 1874," (like all proceedings under that Act), must be commenced in the County Court of the district in which the chief office or place of meeting for the business of the society is situate (*l*).

In what district proceedings to wind up a building society should be taken.

A scale of fees applicable to winding-up proceedings under "The Building Societies Act, 1874," is contained in Schedule (B.), Part III., of "The County Court Rules, 1875."

Fees on proceedings.

As regards the practice in proceedings to wind up a building society it is to be noted that "The Building Societies Act, 1874," provides, that "*general orders for regulating the proceedings of the Court under this section may be from time to*

Practice.

*The County  
Court Rules,  
1875, Order  
XXXIX.*

“time made by the authority for the time being empowered to make general orders for the Court” (*m*).

In pursuance of this provision of “The Building Societies Act, 1874,” the following order has been framed which is contained in “The County Court Rules, 1875” :—

“The general orders, rules, and forms of the Chancery Division of the High Court of Justice regulating for the time being the mode of proceeding under ‘The Companies Acts, 1862 and 1867,’ shall be the orders, rules, and forms in all proceedings in the County Courts for the winding up of a society registered under ‘The Industrial and Provident Societies Act, 1862,’ ‘The Building Societies Act, 1874,’ or for the winding up of a company under ‘The Companies Acts, 1862 and 1867,’ so far as the same are applicable : Provided that where it shall appear to the Court inconvenient that the Bank of England should be the bank used for the purposes mentioned in the order and rules, it shall be competent for the Court to name some bank to be used in lieu of the Bank of England.”—Order XXXIX.

In the chapter on “Winding up,” contained in a subsequent portion of this work (*mm*), are contained both the provisions of “The Companies Act, 1862,” and also the rules under such Act. It fully describes the practice in a winding up, whether such winding up be a compulsory winding up, or a voluntary winding up, or a winding up under the supervision of the Court. To it reference must be made for details.

(*m*) 37 & 38 Vict. c. 42, s. 32, *ante*, pp. 879, 880.

(*mm*) *Post*, Division IV. cap. vii., pp. 1119 *et seq.*



## BOOK V.—DIVISION III.

### PROCEEDINGS UNDER SPECIAL STATUTES PROVIDING FOR THE SETTLEMENT OF DISPUTES.

#### CHAPTER V.

##### JURISDICTION AND PROCEEDINGS IN RELATION TO FRIENDLY SOCIETIES.

"THE Friendly Societies Act, 1875"—38 & 39 Vict. c. 60—  
is the last of a series of enactments relating to friendly societies  
and other kindred associations. It repeals all previously  
existing enactments, and consolidates into one Act all the  
legislative provisions now existing with regard to such associa-  
tions.

"The Friendly  
Societies Act,  
1875."

Three classes of friendly societies are subject to the pro-  
visions of "The Friendly Societies Act, 1875," namely : (1.)  
Societies whose rules have been *registered*, *enrolled*, or *certified*  
under previous Acts (*a*) ; (2.) Societies whose rules have been  
*deposited* under section 44 of 18 & 19 Vict. c. 63 (*b*) ; and (3.)  
Societies which are registered under "The Friendly Societies  
Act, 1875" (*c*).

Three kinds  
of societies  
are subject to  
"The Friendly  
Societies Act,  
1875."

With regard to the *first* of the three classes above men-  
tioned, it is provided that, societies which are in that position  
shall be deemed to be registered under "The Friendly Societies  
Act, 1875 ;" but, such of their existing rules as do not con-  
travene the provisions of the Act, are to continue in force till  
rescinded or altered, and nothing is to affect the validity of the  
rules of such friendly societies as were established before  
15th August, 1850 (*d*).

(1.) Societies  
enrolled or  
certified  
under pre-  
vious Acts.

With regard to the *second class* of societies above mentioned,  
it was provided, in effect, that a previous enactment should  
apply to them until their registration under "The Friendly  
Societies Act, 1875," or until the 31st December, 1878, which-  
ever should first happen (*e*). As the date last mentioned has

(2.) Societies  
whose rules  
have been  
*deposited*  
under a pre-  
vious Act.

(*a*) Sect. 6.

(*b*) Sect. 7.

(*c*) Sect. 8, *post*, pp. 984, 985.

(*d*) Sect. 6.

(*e*) Sect. 7.

(3.) Societies registered under "The Friendly Societies Act, 1875," itself.

Enumeration of the societies which may be registered under "The Friendly Societies Act, 1875."

(a.) Friendly societies.

*The Friendly Societies Act, 1875, s. 8.*

now elapsed, it follows, it is submitted, that they are now altogether governed by the provisions of "The Friendly Societies Act, 1875," and not by the earlier enactment.

With regard to the *third* class of societies above mentioned—*i.e.*, societies registered under "The Friendly Societies Act, 1875," it is to be noted that the Act itself accurately defines what societies may be registered under it. This it does in a section as follows:—

"The following societies may be registered under this Act ;  
" viz.,

" (1.) Societies (herein called friendly societies) established  
" to provide by voluntary subscriptions of the members thereof,  
" with or without the aid of donations—

" For the relief or maintenance of the members, their  
" husbands, wives, children, fathers, mothers, brothers  
" or sisters, nephews or nieces, or wards being orphans,  
" during sickness or other infirmity, whether bodily  
" or mental, in old age (which shall mean any age  
" after fifty) or in widowhood, or for the relief or  
" maintenance of the orphan children of members  
" during minority ;

" For insuring money to be paid on the birth of a mem-  
" ber's child, or on the death of a member, or for the  
" funeral expenses of the husband, wife, or child of a  
" member, or of the widow of a deceased member, or,  
" as respects persons of the Jewish persuasion, for the  
" payment of a sum of money during the period of  
" confined mourning ;

" For the relief or maintenance of the members when on  
" travel in search of employment, or when in dis-  
" tressed circumstances, or in case of shipwreck, or

"poses of social intercourse, mutual helpfulness, mental and moral improvement, and rational recreation :

"(5.) Societies for any purpose which the Treasury may authorise as a purpose to which the powers and facilities of this Act ought to be extended (herein called 'specially authorised societies')."—38 & 39 Vict. c. 60, s. 8.

(c.) Specially authorised societies.

"The Treasury may limit the application of this Act, as respects specially authorised societies, to such of the provisions herein contained as may be specified in the authority for registering any such society."—38 & 39 Vict. c. 60, s. 9.

Limited application of Act in case of specially authorised societies.

"The Friendly Societies Act, 1875," provides, by the following section (sub-section (5)), that in all legal proceedings whatsoever concerning the property of registered societies the same shall be stated to be the property of the trustees for the time being in their proper names as trustees for the society or branch (as the case may be) without further description :—

*The Friendly Societies Act, 1875, s. 9.*

"In all legal proceedings whatsoever concerning any such property the same shall be stated to be the property of the trustees for the time being in their proper names as trustees for the society or branch (as the case may be) without further description."—38 & 39 Vict. c. 60, s. 16, sub-sect. (5) (f).

In legal proceedings the property of registered societies to be stated to be the property of the trustees of such society.

"The Friendly Societies Act, 1875," contains the following general provision as to the parties to proceedings under the Act, and the service of process thereunder :—

*The Friendly Societies Act, 1875, s. 16, sub-s. (5).*

"With respect to legal proceedings against registered societies, the following provisions shall have effect :—

Parties and service of process.

"(1.) The trustees of any society or branch, or any other officers authorised by the rules thereof, may bring or defend, or cause to be brought or defended, any action, suit, or other legal proceeding in any Court whatsoever, touching or concerning any property, right, or claim of the society or branch, as the case may be, and shall sue and be sued, implead and be impleaded, in their proper names, without other description than the title of their office.

—Parties.  
*The Friendly Societies Act, 1875, s. 21.*

"(2.) In legal proceedings which may be brought under this Act by a member or person claiming through a member, the society may also be sued in the name, as defendant, of any officer or person who receives contributions or issues policies on behalf of the society within the jurisdiction of the Court in which the legal proceeding is brought, with the addition of the words 'on behalf of the society' (naming the same).

"(3.) No legal proceeding shall abate or be discontinued by the death, resignation, or removal from office of any officer, or by any act of such officer after the commencement of the proceedings.

"(4.) The summons, writ, process or other proceeding to be issued to or against the officer or other person sued on behalf

—Service of process.  
*Ibid.*

(f) It has not been thought necessary to set out the whole of section 16.

“ of a society shall be sufficiently served by personally serving  
“ such officer or other person, or by leaving a true copy thereof  
“ at the registered office of the society, or at any place of busi-  
“ ness of the society within the jurisdiction of the Court in  
“ which the proceeding is brought, or, if such office or place of  
“ business be closed, by posting such copy on the outer door of  
“ the same ; but in all cases where the said summons, writ,  
“ process, or other proceeding shall not be served by means of  
“ such personal service or by leaving a true copy thereof at the  
“ registered office of the society, a copy thereof shall be trans-  
“ mitted addressed to the committee of management at the  
“ registered office of the society, and the same shall be enclosed  
“ in a registered letter posted at least six days before any  
“ further step shall be taken on such summons, writ, process,  
“ or other proceeding.”—38 & 39 Vict. c. 60, s. 21.

Effect of  
section 21.

It is to be noticed that the above section provides that the trustees or other officers of a society may bring or defend any action, &c., “ *touching, or concerning any property, right, or claim of the society or branch.*” A somewhat similar provision was contained in 18 & 19 Vict. c. 63 (*g*), which is now repealed, and on this provision there is a decision to which reference will now be made. In *Roberts v. Page* (*h*) the facts were as follows. Proceedings having been taken by a member of a society in the County Court to enforce a claim against a society, a compromise was arrived at between the plaintiff, the solicitor of the member, and the society, by which, *inter alia*, the society promised to pay the plaintiff certain costs and charges. These costs and charges not having been paid, the plaintiff sued the secretary of the society in a superior Court. It was held that this was a proceeding touching the right of the society and was properly brought against the secretary.

said order does not prescribe any mode of procedure, the rules of procedure in the preceding orders are made applicable. On this subject "The County Court Rules, 1875," provide as follows :—

"The rules of procedure contained in the preceding orders shall apply to proceedings under 'The County Courts Admiralty Jurisdiction Acts, 1868 and 1869,' 'The Agricultural Holdings (England) Act, 1875,' and 'The Friendly Societies Act, 1875,' except where Orders XXXIII. (i), XXXIV. (k), and XXXV. (l) provide any other or inconsistent mode of procedure."—Order XXXVIII.

With regard to fees in proceedings in the County Court under "The Friendly Societies Act, 1875," it may be mentioned that the poundage is to be estimated upon the amount in dispute (m).

It is expressly provided that the registrars and high bailiffs are to be remunerated for the duties to be performed by them under "The Friendly Societies Act, 1875." This provision is contained in the following section of the Act :—

"(mm) . . . . The registrars and high bailiffs of the County Courts shall be remunerated for the duties to be performed by them under this Act in such manner as the Treasury, with the consent of the Lord Chancellor, shall from time to time order and direct."—38 & 39 Vict. c. 60, s. 34.

"The Friendly Societies Act, 1875," confers jurisdiction upon the County Courts as follows :—(1.) To compel officers of friendly societies to render accounts and deliver over money or property (n); (2.) To determine (either by consent of the parties, or, where the rules contain no directions as to disputes, or where no decision is given within 40 days) disputes between members of friendly societies and the societies or their officers (o); (3.) To give relief to members of dissolved friendly societies; and (4.) To enforce payment of moneys due to the societies from members of registered cattle insurance societies, or of other societies authorised by the Treasury (p).

The jurisdiction under each of the four heads just mentioned being conferred by distinct sections of the Act, and the practice as to each slightly differing from the others, it will be convenient to deal with each of these matters in a separate section.

(i) Which relates to Admiralty actions, see *ante*, Book IV. pp. 735 *et seq.*

(k) Which relates to proceedings under "The Agricultural Holdings Act." See *post*, cap. viii. of this Division, at pp. 1015 *et seq.*

(l) The Rules contained in this Order will be found set out in subsequent pages of this Chapter.

(m) See Appendix I.

(mm) The former part of this section applies only to Scotland and Ireland.

(n) See sect. 20, subsect. 2, *infra*, p. 988.

(o) See sect. 22, *infra*, and also sect. 30, the latter of which sections has been held, *Re Alfred Holt*, L. R. 4 Q. B. Div. 29, to apply to *all* friendly societies.

(p) Sect. 31, *infra*, p. 998.

cases under  
"The Friendly  
Societies Act,  
1875."

Order  
XXXVIII.

Fees.

Remuneration  
of County  
Court officers  
for duties  
under "The  
Friendly  
Societies  
Act, 1875."

The Friendly  
Societies Act,  
1875, s. 34.

Summary of  
jurisdiction  
of the County  
Courts under  
"The Friendly  
Societies Act,  
1875."

SECTION I.—PROCEEDINGS TO COMPEL OFFICERS TO ACCOUNT  
OR TO DELIVER OVER MONEY OR PROPERTY.

Jurisdiction  
to compel the  
delivery over  
by officers of  
property or  
money.

*The Friendly  
Societies Act,  
1875, s. 20.*

The jurisdiction of the County Court to compel the officers of a friendly society to pay over money of a friendly society or to deliver up property belonging to it, is conferred by the following section :—

“ With respect to officers of registered societies (*r*) having receipt or charge of money, the following provisions shall have effect :

“ (1.) Every officer, if the rules of the society require, shall, before taking upon himself the execution of his office, become bound with one sufficient surety at the least in a bond according to one of the forms set forth in the third schedule to this Act, or give the security of a guarantee society, in such sum as the society directs, conditioned for his rendering a just and true account of all moneys received and paid by him on account of the society at such times as its rules appoint, or as the society or the trustees or committee of management thereof require him to do so, and for the payment by him of all sums due from him to the society.

“ (2.) Every officer, his executors or administrators, shall, at such times as by the rules of the society he should render account, or upon demand made, or notice in writing given or left at his last or usual place of residence, give in his account as may be required by the society, or by the trustees or committee of management of the society, to be examined and allowed or disallowed by them, and shall, on the like demand or notice, pay over all moneys and deliver all property for the time being in his hands or custody to such person as the

Proceedings under section 20 of "The Friendly Societies Act, 1875," must be commenced by plaint and summons (*s*). For "The County Court Rules, 1875," provide as follows on the subject :—

"All applications to the Court by the trustees or authorised officers of a friendly society in respect of any of the matters mentioned in section 20 of The Friendly Societies Act, 1875, shall, whether any bond be put in suit or not, be by action commenced by plaint and summons in the ordinary way in which the society or the trustees or authorised officers thereof shall be plaintiffs and the person against whom the application is made defendant."—Order XXXV. r. 1.

"If the application be made by action without putting the bond in suit the summons or the particulars annexed thereto shall state shortly the nature of the act required to be done or the neglect complained of."—Order XXXV. r. 2.

"If the act required to be done be the delivering up of any property, the summons or the particulars annexed thereto shall contain an intelligible description of the property required to be given up."—Order XXXV. r. 3.

The proper parties to the proceedings and the mode of service thereof can be ascertained by reference to the general provisions set out at the commencement of this chapter (*t*).

Save in so far as the special provisions just referred to and set out in the commencement of this chapter varies it, the practice in proceedings under "The Friendly Societies Act" is directed by Order XXXVIII., above set out (*u*), to be the same as in ordinary cases.

The proceedings and evidence at the hearing are the same as in ordinary actions (*x*). We have already seen that documents purporting to be under the Seal of the Central Office are *per se* evidence without further proof (*y*).

The form of order to be made at the hearing is provided in the Appendix of Forms (*z*).

There is no appeal from the decision of the County Court under section 20 (*a*) of "The Friendly Societies Act, 1875," it being expressly provided by that section that the order of the Court shall be "*final and conclusive*."

An order made under "The Friendly Societies Act" may be enforced in the same way as other orders of the County Court. For the mode of enforcing such orders reference must be made to a former portion of this Work (*b*).

How proceedings under s. 20 to be taken.

Plaint and summons to be entered.

Order XXXV. rule 1.

Particulars to state nature of Act required.

Order XXXV. rule 2.

And to describe property (if any) required to be given up.

Order XXXV. rule 3.

Parties to service of proceedings.

Practice. Hearing.

Form of order.

Enforcement of order.

(*s*) The ordinary fees are payable on such a plaint. See *supra*, p. 987.

(*t*) *Supra*, p. 985.

(*u*) *Supra*, p. 987.

(*x*) See *ante*, Book II. cap. xiii., pp. 444 *et seq.*

(*y*) See sect. 39 of the Act, set out *supra*, p. 986.

(*z*) Appendix II. Form 190.

(*a*) *Supra*, p. 988.

(*b*) See *ante*, Book II. cap. xix., pp. 586 *et seq.*

Form of  
order.

In the Appendix of Forms there will be found forms of order for execution (c), and also of a warrant of execution against goods (d).

## SECTION II.—PROCEEDINGS TO DETERMINE DISPUTES BETWEEN FRIENDLY SOCIETIES AND THEIR MEMBERS.

Jurisdiction of  
County Court  
to decide dis-  
putes between  
friendly  
societies  
and their  
members.

*The Friendly  
Societies Act,  
1875, s. 22.*

There are two sections in "The Friendly Societies Act, 1875," under both of which (according to the construction which a recent decision (e) has placed upon such Acts) the County Courts possess jurisdiction to settle disputes between friendly societies, or the officers of friendly societies, and the members of such societies. The two sections in question are as follow :—

"Every dispute between a member or person claiming through a member or under the rules of a registered society, and the society or an officer thereof, shall be decided in manner directed by the rules of the society, and the decision so made shall be binding and conclusive on all parties without appeal, and shall not be removable into any court of law or restrainable by injunction ; and application for the enforcement thereof may be made to the County Court.

"Provided as follows :—

"(a.) The parties to a dispute in a society may, by consent (unless the rules of such society expressly forbid it), refer such dispute to the chief registrar, or to the assistant registrar in Ireland or Scotland, who shall, with the consent of the Treasury, either by himself or by any other registrar, hear and determine such dispute, and shall have power to order the expenses of determining the same to be paid either out of the funds of the society or by such parties to the dispute as he shall think fit, and such determination and order shall have the same effect and be enforceable in like manner as a decision made in the manner directed by the rules of the society :

"(b.) The chief or other registrar to whom any dispute is referred may administer oaths, and may require the attendance of all parties concerned, and of witnesses, and the production of all books and documents relating to the matter in

(c) Appendix II. Form 191.

(d) Appendix II. Form 192.

(e) The decision, *Re Alfred Holl*, L. R. 4 Q. B. Div. 29, cited more fully *infra*, p. 994.



“question ; and any person refusing to attend,  
 “or to produce any documents, or to give  
 “evidence before such chief or other registrar,  
 “shall be guilty of an offence under this Act :

“(c.) Where the rules of a society direct that disputes  
 “shall be referred to justices, the dispute shall  
 “be determined by a Court of summary juris-  
 “diction :

“Provided that in every case of dispute  
 “cognisable under the rules of a society by a  
 “Court of summary jurisdiction, it shall be  
 “lawful for the parties thereto to enter into a  
 “consent referring such dispute to the County  
 “Court, which may hear and determine the  
 “matter in dispute :

“(d.) Where the rules contain no direction as to disputes,  
 “or where no decision is made on a dispute  
 “within forty days after application to the  
 “society for a reference under its rules, the  
 “member or person aggrieved may apply either  
 “to the County Court, or to a Court of summary  
 “jurisdiction, which may hear and determine  
 “the matter in dispute :

“(e.) The Court, chief or other registrar, may, at the  
 “request of either party, state a case for the  
 “opinion in England of the Supreme Court of  
 “Judicature, . . . on any question of law, and  
 “may also grant to either party such discovery  
 “as to documents and otherwise, or such inspec-  
 “tion of documents, . . . as might be granted  
 “by any Court of law or equity, such discovery  
 “to be made on behalf of the society by such  
 “officer of the same as such Court or regis-  
 “trar may determine.”—38 & 39 Vict. c. 60,  
 s. 22.

“The provisions of the present section apply only to friendly societies and, except as after mentioned, industrial assurance companies receiving contributions by means of collectors at a greater distance than ten miles from the registered office of the society. *The Friendly Societies Act, 1875, s. 30.*

“(1.) The society shall deliver to every person, on his becoming a member of or insuring with a society, a copy of the rules of the society, together with a printed policy signed by two of the committee or managers of the society and by the secretary, at a price not exceeding one penny for the rules and one penny for the policy : in the case of a family enrolled in one book or card, one copy of rules and one family policy shall be sufficient.

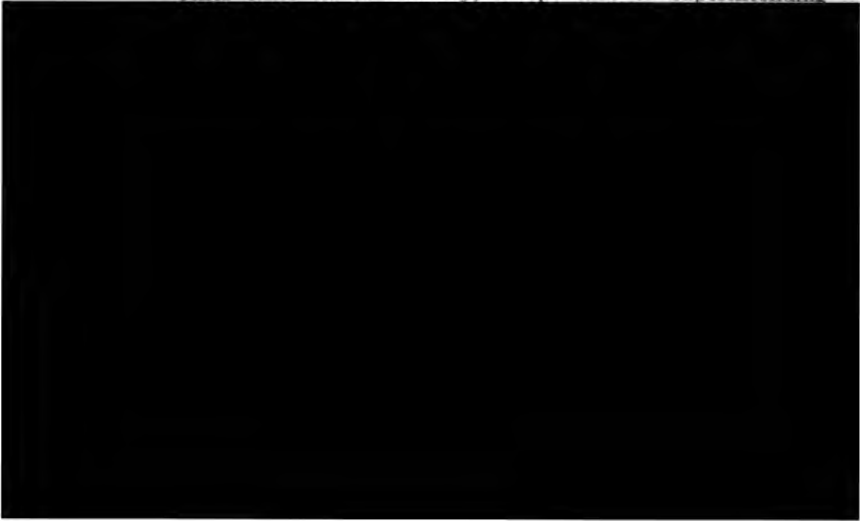
“(2.) No forfeiture is incurred by any member or person

“insured by reason of any default in paying any contribution,  
“until after a written or printed notice has been delivered or  
“sent by post prepaid to him, or left at his last known place of  
“abode, by or on behalf of the society, stating the amount due  
“by him, and apprising him that in case of default of payment  
“by him within a reasonable time, not being less than fourteen  
“days, and at a place, to be specified in such notice, his interest  
“or benefit will be forfeited, and after default has been made  
“by him in paying his contribution in accordance with such  
“notice.

“(3.) No member of or person insured with any society can,  
“unless in the case of an amalgamation, transfer of engage-  
“ments, or conversion into a company under section twenty-four  
“of this Act, or as respects an industrial assurance company of an  
“amalgamation or transfer of business under the Life Assurance  
“Companies Act, 1870, become or be made a member of or be  
“insured with any other society without his written consent,  
“or, in the case of an infant, without that of his father or  
“other guardian; and the society to which such member or  
“person is sought to be transferred shall within seven days  
“from his application for admission to the same give notice  
“thereof in writing to the society from which he is sought to  
“be transferred.

“The provisions of this sub-section shall apply to all friendly  
“societies, whether registered under this Act or unregistered,  
“and industrial assurance companies receiving contributions by  
“means of collectors.

“(4.) No collector, whilst he is such, is capable of being a  
“member of the committee of management, or other governing  
“body (by whatever name) of the society, or of holding any  
“other office in the society, except that of superintending



"and shall during such fourteen days keep affixed a copy of such notice in legible characters in some conspicuous place in or outside of every office at which the business of the society is carried on. *The Friendly Societies Act, 1875, s. 30.*

"(8.) A copy of every balance sheet of a society shall, during the seven days next preceding the meeting at which the same is to be presented, be kept open by the society for inspection at every office at which the business of the society is carried on, and shall be delivered or sent prepaid to every member on demand.

"(9.) The annual returns shall be certified by some person not an officer of the society (otherwise than as auditor thereof), carrying on publicly the business of an accountant, and if not so certified shall be deemed not to have been made.

"(10.) In all disputes between a society and any member or person insured, or any person claiming through a member or person insured, or under the rules, such member or person may, notwithstanding any provisions of the rules of such society to the contrary, apply to the County Court, or to the Court of summary jurisdiction for the place where such member or other person resides, and such Court may settle such dispute in manner herein provided.

"(11.) In proving service of any notice by this section authorised to be sent by post, it is sufficient to prove that such notice was properly directed, and was put, as a prepaid letter, into the post office in such time as to admit of its being delivered in due course of delivery within the period (if any) prescribed for sending the same.

"(13.) All the provisions of the present section apply to societies existing at the commencement of this Act, and shall be contained in the rules of all future societies to which this section applies.

"The word 'society' in the present section shall, except in provisions one, eight, and nine, include all industrial assurance companies, but nothing in the present section contained shall apply to any assurance with any such company, the premiums in respect of which are receivable at greater periodical intervals than two months."—38 & 39 Vict. c. 60, s. 30.

The construction of the two sections above set out is by no means clear, and they appear in some respects at all events to conflict with one another.

It has been recently decided that, notwithstanding the introductory words of section 30 itself, and notwithstanding also the provisions in section 22, the enactments of sub-section 10 of section 30 apply to *all* friendly societies, and are not restricted to societies receiving contributions by means of collectors at a greater distance than ten miles from their registered office; and

Construction of above sections.

Section 30 applies to all societies.

that a Court of summary jurisdiction, or a County consequently now has jurisdiction—whatever be the mode of the society—to decide disputes even in cases where the society prescribe the mode in which disputes are settled (*f*).

Mode of  
commencing  
proceedings  
under above  
sections.

“The County Court Rules, 1875,” contain an expression as to the mode in which proceedings under section 22 of the Act are to be commenced. No such direction is as to proceedings under section 30—very probably because at the time when the rules were framed, the decision (*f*) that section was of general application had not been given. The directions as to cases under section 22, are as follows:—

Plaint and  
summons to  
be issued.

Order  
XXXV.  
rule 4.

“Every dispute which shall be referred to the County Court under section 22 of the said Act shall be so referred to be commenced by plaint and summons in the ordinary way in which the claiming or aggrieved member or other party shall be the plaintiff, and the society by such of the members as shall be authorised by section 21 of the said Act to be sued on behalf of the society as the plaintiff shall elect to sue shall be the defendant.”—Order XXXV. r. 4.

And parti-  
culars to  
state the  
dispute.

Order  
XXXV.  
rule 5.

Practice.

“The summons or the particulars annexed thereto (i) shall state correctly the nature of the dispute referred to the County Court, and (ii) the relief which the plaintiff claims.”—Order XXXV. r. 5.

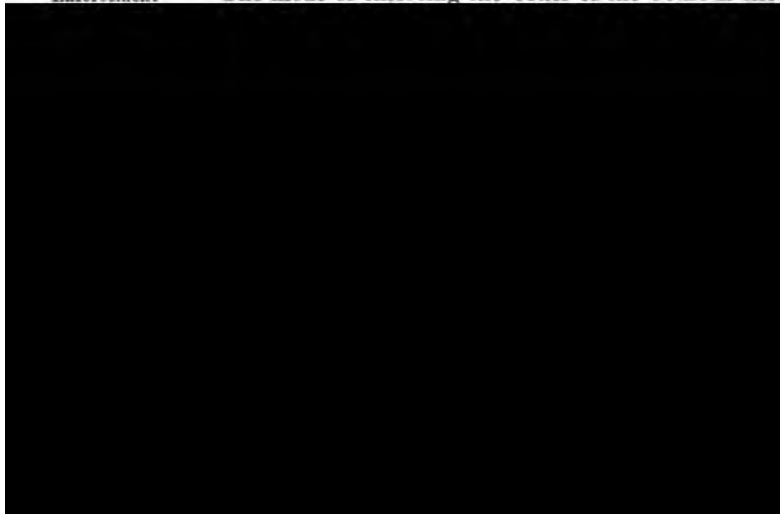
The plaint being entered and the summons issued, the proceedings continue in the ordinary way (*i*)—save so far as respects the service of process in the action—evidence at the hearing are specially provided for by the provisions of the Act. The mode of enforcing the Order of the Court is the subject of the next chapter.

Order at  
hearing.

In the Appendix of Forms, there will be found a form of Order to be made at the hearing (*l*).

Enforcement

The mode of enforcing the Order of the Court is the



SECTION III.—PROCEEDINGS TO ASSESS CLAIMS BY MEMBERS OF SOCIETIES IN COURSE OF DISSOLUTION.

A section of "The Friendly Societies Act, 1875," enables societies to be dissolved in certain events ; and also gives (by subsection (7)) power to a County Court to adjust the claim of any member or person entitled to derive a benefit from the society who is dissatisfied with the provision made for his claim. Such section (so far as material to the present subject) is as follows :—

Jurisdiction to adjust claims of members of friendly societies in course of dissolution.

"With respect to the dissolution of registered societies, the following provisions shall have effect :  
 "(1.) A society may terminate or be dissolved in any of the following ways :

*The Friendly Societies Act, 1875, s. 25.*

- "(a.) Upon the happening of any event declared by the "rules to be the termination of the society :
- "(b.) As respects all societies other than friendly societies, "by the consent of three-fourths of the members, testified by their signatures to the instrument of dissolution :
- "(c.) As respects friendly societies, by the consent of five-sixths in value of the members (including honorary members, if any), testified by their signatures to the instrument of dissolution, and also by the written consent of every person for the time being receiving or entitled to receive any relief, annuity, or other benefit from the funds of the society, unless the claim of such person be first duly satisfied, or adequate provision made for satisfying such claim, and in the case of a branch society with the consent of the central body of the society, or in accordance with the general rules of the society :
- "(d.) By the award of the chief registrar or assistant registrars in the case herein specified.
- "(2.) The instrument of dissolution shall set forth—
  - "(a.) The liabilities and assets of the society in detail :
  - "(b.) The number of members and the nature of their interests in the society respectively :
  - "(c.) The claims of creditors (if any), and the provision to be made for their payment :
  - "(d.) The intended appropriation or division of the funds and property of the society, unless the same be stated in the instrument of dissolution to be left to the award of the chief registrar.
- "(3.) Alterations in the instrument of dissolution may be made with the like consents as herein-before provided, testified in the same manner.

*The Friendly  
Societies Act,  
1875, s. 25.*

“(4.) A statutory declaration shall be made by one of the trustees, or by three members and the secretary of the society, that the provisions of this Act have been complied with, and shall be sent to the registrar with the instrument of dissolution; and any person knowingly making a false or fraudulent declaration in the matter shall be guilty of a misdemeanor.

“(5.) The instrument of dissolution and all alterations therein shall be registered in manner herein provided for the registry of rules, and shall be binding upon all the members of the society.

“(6.) The registrar shall cause a notice of the dissolution to be advertised at the expense of the society in the manner provided by this Act for advertising an award of the registrar for dissolution; and unless within three months from the date of the *Gazette* in which such advertisement appears, a member or other person interested in or having any claim on the funds of the society commences proceedings to set aside the dissolution of the society, and such dissolution is set aside accordingly, the society shall be legally dissolved from the date of such advertisement, and the requisite consents to the instrument of dissolution shall be considered to have been duly obtained without proof of the signatures thereto.

“(7.) As respects friendly societies—

“(a.) The value of members shall be ascertained by giving one vote to every member, and an additional vote for every five years that he has been a member, but to no one member more than five votes in the whole:

“(b.) No instrument of dissolution shall direct or contain any provision for a division or appropriation of the funds of the society, or any part thereof, otherwise than for the purpose of carrying into effect the objects of the society as declared in the rules thereof for the time being, unless the claim of every member or person claiming any relief, annuity, or other benefit from the funds thereof be first duly satisfied, or adequate provision be made for satisfying such claim:

“(c.) Any officer or person aiding or abetting in the dissolution of a society, otherwise than as in this Act provided, shall, on summary conviction, be liable to be committed to the common gaol or house of correction, there to be kept to hard labour for any term not exceeding three months:

“(d.) If any member of a dissolved society, or person claiming any relief, annuity, or other benefit from the funds thereof, be dissatisfied with the provision made for satisfying his claim, such

“ member or other person may apply to the County Court of the district within which the chief or any other place of business of the society is situate for relief or other order, and such Court shall have the same powers in the matter as in regard to the settlement of disputes under this Act.”

*The Friendly Societies Act, 1875, s. 25.*

“ (8.) With respect to dissolutions and the distribution of funds upon the award of the chief registrar (*mm*) :

“ (*d.*) Every award under this or the last preceding section, whether for dissolution or distribution of funds, is final and conclusive on the society in respect of which the same is made, and on all members of the same, and other persons having any claim on the funds of the society, without appeal, and shall be enforced in the same manner as a decision on a dispute under this Act ; and the expenses of every investigation and award, and of publishing every notice of dissolution, shall be paid out of the funds of the society before any other appropriation thereof shall be made :

“ (*e.*) Notice of every award for dissolution shall, within twenty-one days after the same shall have been made, be advertised by the central office in the *Gazette*, and in some newspaper circulating in the county in which the registered office of the society is situated, and unless, within three months from the date of the *Gazette* in which such advertisement appears, a member or other person interested in or having any claim on the funds of the society commences proceedings to set aside the dissolution of the society, consequent upon such award, and such dissolution is set aside accordingly, the society shall be legally dissolved from the date of such advertisement, and the requisite consents to the application to the registrar shall be considered to have been duly obtained without proof of the signatures thereto.

“ (9.) The provisions of the present section shall not apply to any society having branches without the consent of the central body of such society.”—38 & 39 Vict. c. 60, s. 25. Practice.

Proceedings under subsection 7, clause (*d.*) of the above section must be by way of action commenced by plaint and sum-

(*mm*) Clauses (*e.*) and (*d.*) of subsection 8 relate to awards by the chief registrar, against which there is (by clause (*d.*)) no appeal.

mons (*n*). The proceedings must be at the instance of a member or a person entitled to some benefit from the society (*o*), and taken in the district directed by the section itself (*o*). Save in these particulars the proceedings are precisely the same as in any ordinary action (*n*), and will be found described in Book II. of this Work (*p*).

**SECTION IV.—PROCEEDINGS TO ENFORCE PAYMENT FROM MEMBERS THEREOF OF CONTRIBUTIONS DUE TO CATTLE INSURANCE AND OTHER AUTHORISED SOCIETIES.**

Jurisdiction of County Court to compel payments by members thereof to registered Cattle Insurance Societies.

*The Friendly Societies Act, 1875, s. 31.*

The jurisdiction indicated at the head of this section is entirely derived from a section in "The Friendly Societies Act, 1875," which is in the following terms :—

"The provisions of the present section apply only to registered cattle insurance societies, and to such specially authorised societies as the Treasury may allow to take the benefit of the present section :

"(1.) The rules bind the society and the members thereof, and all persons claiming through them respectively, to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such rules contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to such rules subject to the provisions of this Act.

"(2.) All moneys payable by a member to the society are deemed to be a debt due from such member to the society, and are recoverable as such in the County Court of the district in which such member resides."—38 & 39 Vict. c. 60, s. 31.

*The above section it is to be noticed applies only to the*



## BOOK V.—DIVISION III.

### PROCEEDINGS UNDER SPECIAL STATUTES PROVIDING FOR SETTLEMENT OF DISPUTES.

#### CHAPTER VI.

##### JURISDICTION AND PROCEEDINGS UNDER "THE INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1876."

"THE Industrial and Provident Societies Act, 1876"—  
39 & 40 Vict. c. 45—consolidates and amends the law relating  
to industrial and provident societies, and assimilates the same  
in certain respects to the law relating to friendly societies (*a*).  
It repeals previous enactments on the same subject (*b*), and  
confers important jurisdiction on the County Courts.

"The Industrial and  
Provident  
Societies Act,  
1876."

The Act contains an interpretation clause, the material  
portions of which are as follow :—

Interpretation  
of Act.

"In this Act, if not inconsistent with the context, the  
following terms shall have the meanings herein-after respec-  
tively assigned to them :

*The Industrial and  
Provident  
Societies Act,  
1876, s. 3.*

" 'The Treasury' shall mean the Lords Commissioners of  
" Her Majesty's Treasury :

" 'England' shall include the Channel Islands (except as  
" hereinafter provided) :

" 'The registrar' shall mean for England the central  
" office established by 'The Friendly Societies Act,  
" 1875,' and for Scotland or Ireland the assistant  
" registrar of friendly societies for either country  
" respectively ; 'the central office' shall mean the  
" central office so established ; and 'chief registrar'  
" and 'assistant registrar' shall mean chief registrar  
" and assistant registrar of friendly societies respec-  
" tively :

" 'Country' shall mean England, Scotland, or Ireland, as  
" the case may be :

"The several ridings of the county of York, and the

(*a*) Preamble.  
(*b*) Schedule I.

- “several Channel Islands, respectively, shall be deemed to be counties :
- “‘Land’ shall include hereditaments, and in Scotland heritable subjects, of whatever description, and chattels real :
- “‘Property’ shall mean all real and personal estate (including books and papers) :
- “‘Registered society’ shall mean a society registered or deemed to be registered under this Act :
- “‘Amendment of rule’ shall include a new rule, and a resolution rescinding a rule :
- “‘Rules’ shall mean rules for the time being :
- “‘The committee’ shall mean the committee of management or other directing body of a society :
- “‘Persons claiming through a member’ shall include the heirs, executors, administrators, and assigns of a member, and also his nominees where nomination is allowed :
- “‘Officer’ shall extend to any trustee, treasurer, secretary, member of the committee, manager, or servant, other than a servant appointed by the committee, of a society :
- “‘Meeting’ shall include (where the rules of a society so allow) a meeting of delegates appointed by members : . . . .
- “‘Summary Jurisdiction Acts’ shall mean—
  - “As to England, the Act 11 & 12 Vict. c. 43, and any Acts amending the same : . . . .
- “‘Gazette’ shall mean the *London Gazette* for England. . . .”—39 & 40 Vict. c. 45, s. 3.

What societies are within “The Industrial and Provident Societies Act, 1874.”

*The Industrial and Provident Societies Act, 1876, s. 5.*

*The Industrial and Provident Societies Act, 1876, s. 6..*

With regard to the societies which are within its operation, “The Industrial and Provident Societies Act, 1874,” provides as follows :—

“Every incorporated society now subsisting whose rules have been registered or certified under any Act relating to industrial and provident societies, shall be deemed to be a society registered under this Act, and its rules shall, so far as the same are not contrary to any express provision of this Act, continue in force until altered or rescinded.”—39 & 40 Vict. c. 45, s. 5.

“The societies which may be registered under this Act are societies (herein called industrial and provident societies) for carrying on any labour, trade, or handicraft, whether whole-sale or retail, including the buying and selling of land, but as to the business of banking subject to the provisions hereinafter contained, of which societies no member other than a society registered under this Act shall have or claim an interest in the funds exceeding two hundred pounds sterling.” 39 & 40 Vict. c. 45, s. 6.

The effect of the registration of a society under the Act is defined by the following enactment :—

“Registered societies shall be entitled to the following privileges :—

“(1.) The registration of a society shall render it a body corporate by the name described in the acknowledgment of registry by which it may sue and be sued, with perpetual succession and a common seal, and with limited liability ; and shall vest in the society all property for the time being vested in any person in trust for the society ; and all legal proceedings pending by or against the trustees of any such society may be prosecuted by or against the society in its registered name without abatement.

“(9.) A person under the age of twenty-one but above the age of sixteen may be a member of a society, unless provision be made in the rules thereof to the contrary, and may, subject to the rules of the society, enjoy all the rights of a member (except as herein provided), and execute all instruments and give all acquittances necessary to be executed or given under the rules, but shall not be a member of the committee, trustee, manager, or treasurer of the society.

“(10.) A promissory note or bill of exchange shall be deemed to have been made, accepted, or endorsed on behalf of any society if made, accepted, or endorsed in the name of the society, or by or on behalf or account of the society, by any person acting under the authority of the society.

“(12.) Contracts on behalf of the society may be made, varied, or discharged as follows :—

“(a.) Any contract, which if made between private persons would be by law required to be in writing, and if made according to the English law to be under seal, may be made on behalf of the society in writing under the common seal of the society, and may in the same manner be varied or discharged :

“(b.) Any contract, which if made between private persons would be by law required to be in writing and signed by the persons to be charged therein, may be made on behalf of the society in writing by any person acting under the express or implied authority of the society, and may in the same manner be varied or discharged :

“(c.) Any contract under seal, which if made between private persons might be varied or discharged at law or in equity by a writing not under seal signed by any person interested therein, may be similarly varied or discharged on behalf of the society by a writing not under seal signed by any person acting under the express or implied authority of the society :

Effect of registration of a society.

*The Industrial and Provident Societies Act, 1876, s. 11, sub-ss. (1.), (9.), (10.), & (12.).*

“(d.) Any contract, which if made between private persons would be by law valid though made by  
 “ parol only and not reduced into writing, may  
 “ be made by parol on behalf of the society by  
 “ any person acting under the express or implied  
 “ authority of the society, and may in the same  
 “ manner be varied or discharged :

“(e.) A signature purporting to be made by a person  
 “ holding any office in the society attached to a  
 “ writing whereby any contract purports to be  
 “ made, varied, or discharged by or on behalf of  
 “ the society shall *prima facie* be taken to be the  
 “ signature of a person holding at the time when  
 “ the signature was made the office so stated :

“ And all contracts which may be or have been made, varied,  
 “ or discharged, according to the provisions herein contained,  
 “ shall, so far as concerns the form thereof, be effectual in law  
 “ and binding on the society and all other parties thereto, their  
 “ heirs, executors, or administrators, as the case may be.”—39  
 & 40 Vict. c. 45, s. 11, sub-ss. (1.), (9.), (10.), and (12.).

A society registered under the Act may change its name ; or may amalgamate with other societies :—

“(2.) A society may, by special resolution, with the approval  
 “ in writing of the chief registrar, or, in the case of societies  
 “ registered and doing business exclusively in Scotland, or Ire-  
 “ land, the assistant registrar for Scotland or Ireland respec-  
 “ tively, change its name ; but no such change shall affect any  
 “ right or obligation of the society, or of any member thereof,  
 “ and any pending legal proceedings may be continued by or  
 “ against the society, notwithstanding its new name.

“(3.) Any two or more societies may, by special resolution  
 “ of both or all such societies, become amalgamated together as  
 “ one society, with or without any dissolution or division of  
 “ the funds of such societies or either of them ; and any society  
 “ may by special resolution transfer its engagements to any  
 “ other registered society which may undertake to fulfil the  
 “ engagements of such society.”—39 & 40 Vict. c. 45, s. 16,  
 sub-ss. (2.) and (3.).

Fees under  
 the Act.

“ The Industrial and Provident Societies Act, 1876,” by the following section enables a scale of fees to be determined in respect of matters to be transacted or for the inspection of documents under the Act :—

*The Industrial and Provident Societies Act, 1876, s. 22.*

“ The Treasury may determine a scale of fees to be paid for  
 “ matters to be transacted or for the inspection of documents  
 “ under this Act.

“ All fees which may be received by any registrar under or  
 “ by virtue of this Act shall be paid into the receipt of Her  
 “ Majesty’s Exchequer.”—39 & 40 Vict. c. 45, s. 22.

Documents

With regard to the hearing, the following section of “ The

Change of  
 name of a  
 society or  
 amalgamation  
 with other  
 societies.

*The Industrial and Provident Societies Act, 1876, s. 16, sub-ss. (2) & (3).*

Industrial and Provident Societies Act, 1876," provides that certain documents shall be received in evidence without further proof:—

"Every instrument or document, copy or extract of an instrument or document, bearing the seal or stamp of the central office, shall be received in evidence without further proof; and every document purporting to be signed by the chief or any assistant registrar, or any inspector or public auditor under this Act, shall, in the absence of any evidence to the contrary, be received in evidence without proof of the signature."—39 & 40 Vict. c. 45, s. 24.

It is, moreover, also provided that the acknowledgment of registry shall be conclusive evidence that the society mentioned therein is duly registered, unless it be proved that the registry of the society has been suspended or cancelled (c).

With regard to the regulation of proceedings (other than winding-up proceedings) (d) under "The Industrial and Provident Societies Act, 1876," it is presumed that since the above Act (as distinguished from "The Industrial and Provident Societies Act, 1862," which it repeals) is not referred to in "The County Court Rules, 1875," proceedings under the Act are in strictness within the provisions of Order XL. (e), and may be either by action or by petition. Inasmuch, however, as the proceedings under "The Industrial and Provident Societies Act, 1876," greatly resemble those under "The Friendly Societies Act, 1875," Order XXXV. which regulates proceedings under the last mentioned Act will likewise so far as applicable guide the practice in proceedings under the former of these Acts (f).

With regard to the remuneration of the registrar and high bailiffs of the County Courts, "The Industrial and Provident Societies Act, 1876," provides as follows:—

"The registrar and high bailiffs of the County Courts shall be remunerated for the duties to be performed by them under this Act in such manner as the Treasury, with the consent of the Lord Chancellor, from time to time orders and directs."—39 & 40 Vict. c. 45, s. 20.

By "The Industrial and Provident Societies Act, 1876," jurisdiction is conferred upon the County Court—(1.) To enforce payments due to the society from members thereof. (2.) To compel the officers of a society to account and to deliver over money and property. (3.) To determine disputes between societies and their members or officers; and (4.) to wind up societies registered under the Act. Each of these heads of jurisdiction must be separately considered.

(c) 39 & 40 Vict. c. 45, s. 7, subsect. 10.

(d) As to which see *post*, Division IV. cap. vii., pp. 1119 *et seq.*

(e) Set out *ante*, p. 887.

(f) The provisions of Ord. XXXV. will be found set out *passim* in cap. v., *ante*, at pp. 989 *et seq.*

under seal of central office to be evidence.

*The Industrial and Provident Societies Act, 1876, s. 24.*

General practice in County Courts under "The Industrial and Provident Societies Act, 1876."

Remuneration of County Court officers.

*The Industrial and Provident Societies Act, 1876, s. 20.*

Summary of the County Court jurisdiction under "The Industrial and Provident Societies Act, 1876."

### SECTION I.—PROCEEDINGS TO ENFORCE PAYMENTS TO INDUSTRIAL SOCIETIES BY MEMBERS THEREOF.

Jurisdiction to compel members of industrial societies to pay moneys due to such society.

*The Industrial and Provident Societies Act, 1876, s. 11, sub-s. (3). Practice.*

A sub-section (namely, sub-section 3) of section 11 of “The Industrial and Provident Societies Act, 1876,” confers upon the County Court jurisdiction to enforce payments from members of an industrial society to the societies to which they belong. The text of the enactment is as follows :—

“All moneys payable by a member to the society shall be a debt due from such member to the society and shall be recoverable as such either in the County Court of the district in which the registered office of the society is situate, or that of the district in which such member resides at the option of the society.”—39 & 40 Vict. c. 45, s. 11, sub-section (3) (g).

The proper mode of instituting proceedings under the above section is by plaint and summons in the ordinary way. The practice can be easily gathered from a close observation of the directions contained in the section itself; from the second book of this work; and by the aid of the introductory chapter to the present book (h).

### SECTION II.—PROCEEDINGS TO COMPEL OFFICERS OF INDUSTRIAL SOCIETIES TO ACCOUNT OR TO DELIVER OVER PROPERTY OR MONEY.

Jurisdiction of County Court to compel

A section in “The Industrial and Provident Societies Act, 1876,” in terms identical with section 20 of “The Friendly Societies Act, 1875” which has already been considered (A)

"at such times as its rules appoint, or as the society or the committee thereof require him to do, and for the payment by him of all sums due from him to the society.

"(2.) Every officer, his executors or administrators, shall, at such times as by the rules of the society he should render account, or upon demand made, or notice in writing given or left at his last or usual place of residence, give in his account as may be required by the society, or by the committee thereof, to be examined and allowed or disallowed by them, and shall, on the like demand or notice, pay over all moneys and deliver all property for the time being in his hands or custody to such person as the society or the committee appoint; and in case of any neglect or refusal to deliver such account, or to pay over such moneys or to deliver such property in manner aforesaid, the society may sue upon the bond or security before mentioned, or may apply to the County Court (which may proceed in a summary way), or to a Court of summary jurisdiction, and the order of either such Court shall be final and conclusive."—39 & 40 Vict. c. 45, s. 13.

As already has been mentioned (*i*), it is probable that, in strictness, proceedings under the above section may be either by action or by petition. The present section, however, being absolutely identical with section 20 of "The Friendly Societies Act, 1875," it will be extremely advisable to closely follow the practice laid down in considering that section (*k*). Accordingly, the process should be by plaint and summons, the particulars or the summons itself describing the act required to be done and the property (if any) required to be given up; while the form of Order at the hearing (*l*), and the forms of execution under it (*m*), can be adapted from the Appendix.

Practice.

### SECTION III.—PROCEEDINGS TO DETERMINE DISPUTES BETWEEN INDUSTRIAL AND PROVIDENT SOCIETIES AND THEIR MEMBERS.

"The Industrial and Provident Societies Act, 1876," contains a clause almost identical in language, and quite identical in effect, with section 22 of "The Friendly Societies Act, 1875." For the Act provides:—

Jurisdiction of County Court to decide disputes between industrial and provident societies and their members.

"With respect to disputes concerning registered societies the following provisions shall have effect:

"(1.) Every dispute between a member or person claiming

(*i*) *Supra*, pp. 976, 1003.

(*k*) See *ante*, cap. v. s. 1, p. 988, *ante*.

(*l*) Appendix II. Form 190.

(*m*) Appendix II. Forms 191 and 192.

Jurisdiction of the County Courts to determine disputes between members of industrial and provident societies and officers thereof.

*The Industrial and Provident Societies Act, 1876, s. 14.*

“ through a member or under the rules of a registered society  
 “ and the society or an officer thereof, shall be decided in  
 “ manner directed by the rules of the society, if they contain  
 “ any such direction, and the decision so made shall be binding,  
 “ and conclusive on all parties without appeal, and shall not be  
 “ removable into any Court of law or restrainable by injunction;  
 “ and application for the enforcement thereof may be made to the County Court.

“ (2.) The parties to a dispute in a society may, by consent  
 “ (unless the rules of such society expressly forbid it), refer such  
 “ dispute to the chief registrar, or to the assistant registrar in  
 “ Scotland or Ireland, who shall, with the consent of the Treasury,  
 “ either by himself or by any other registrar, hear and determine  
 “ such dispute, and shall have power to order the expenses of determining  
 “ the same to be paid either out of the funds of the society or by  
 “ such parties to the dispute as he shall think fit, and such determination  
 “ and order shall have the same effect and be enforceable in like manner as a  
 “ decision made in the manner directed by the rules of the society.

“ (3.) The chief or other registrar to whom any dispute is referred  
 “ may administer oaths, and may require the attendance of all parties  
 “ concerned and of witnesses, and the production of all books and documents  
 “ relating to the matter in question; and any person refusing to attend,  
 “ or to produce any documents, or to give evidence before such chief  
 “ or other registrar, shall be guilty of an offence under this Act.

“ (4.) Where the rules of a society direct that disputes shall be  
 “ referred to justices, the dispute shall be determined by a Court  
 “ of summary jurisdiction :



"officer of the same as such Court or registrar may determine."  
—39 & 40 Vict. c. 45, s. 14.

As before noticed (*n*), Order XL. of "The County Court Rules, 1875," probably in strictness authorises such proceedings to be either by plaint and summons or by petition. But it will be most prudent to commence any proceedings under the above section by plaint and summons, and to adopt minutely the practice directed to be followed under section 22 of "The Friendly Societies Act, 1875." Such practice will be found described in the last chapter (*o*). Practice.

#### SECTION IV. — PROCEEDINGS WITH REFERENCE TO THE WINDING-UP OF INDUSTRIAL OR PROVIDENT SOCIETIES.

The winding-up of industrial and of provident societies is regulated by the following section of "The Industrial and Provident Societies Act, 1876 :"

"With respect to the dissolution of registered societies, the following provisions shall have effect :

"(1.) A society may be dissolved—

"By an order to wind up the society, or a resolution for

"the winding-up thereof, made as is directed in re-

"gard to companies by 'The Companies Act, 1862,'

"the provisions whereof shall apply to any such order

"or resolution, except that the Court having juris-

"diction in the winding-up shall be the County

"Court, and that the term registrar shall for the

"purpose of such winding-up mean the central office

"in England, or the assistant registrar in Scotland

"or Ireland, as the case may be ; or,

"By the consent of three-fourths of the members, testi-

"fied by their signatures to an instrument of disso-

"lution.

"(2.) Where a society is wound up, the liability of a present

"or past member of the society to contribute for payment of

"the debts and liabilities of the society, the expenses of wind-

"ing-up, and the adjustment of the rights of contributories

"amongst themselves, shall be qualified as follows :

"(a.) No individual, society, or company who or which

"has ceased to be a member for one year or

"upwards prior to the commencement of the

"winding-up shall be liable to contribute :

"(b.) No individual, society, or company shall be liable to

"contribute in respect of any debt or liability

"contracted after he or it ceased to be a mem-

"ber :

(*n*) *Supra*, p. 1003.

(*o*) See *ante*, cap. v. s. 2, pp. 990 *et seq.*

Jurisdiction of the County Court to wind-up an industrial or a provident society.

*The Industrial and Provident Societies Act, 1876, s. 17.*

*The Industrial and Provident Societies Act, 1876, s. 17.*

- “(c.) No individual, society, or company not a member  
“ shall be liable to contribute, unless it appears  
“ to the Court that the contributions of the  
“ existing members are insufficient to satisfy the  
“ just demands on the society :
- “(d.) No contribution shall be required from any individual, society, or company exceeding the amount,  
“ if any, unpaid on the shares in respect of which  
“ he or it is liable as a past or present member :
- “(e.) An individual, society, or company shall be taken  
“ to have ceased to be a member, in respect of  
“ any withdrawable share withdrawn, from the  
“ date of the notice or application for withdrawal.
- “(3.) Where a society is terminated by an instrument of dissolution the following provisions shall apply :
- “(a.) The instrument of dissolution shall set forth the  
“ liabilities and assets of the society in detail,  
“ the number of members and the nature of  
“ their interests in the society respectively, the  
“ claims of creditors (if any), and the provision  
“ to be made for their payment, and the intended appropriation or division of the funds  
“ and property of the society, unless the same be  
“ stated in the instrument of dissolution to be  
“ left to the award of the chief registrar :
- “(b.) Alterations in the instrument of dissolution may be  
“ made with the like consents as hereinbefore  
“ provided, and testified in the same manner :
- “(c.) A statutory declaration shall be made by three  
“ members and the secretary of the society that  
“ the provisions of this Act have been complied  
“ with, and shall be sent to the registrar with  
“ the instrument of dissolution, and any person

“ having any claim on the funds of the society  
 “ commences proceedings to set aside the dis-  
 “ solution of the society in the County Court of  
 “ the district where the registered office of the  
 “ society is situate, and such dissolution is set  
 “ aside accordingly, the society shall be legally  
 “ dissolved from the date of such advertisement,  
 “ and the requisite consents to the instrument  
 “ of dissolution shall be considered to have been  
 “ duly obtained without proof of the signatures  
 “ thereto :

“(f.) Notice shall be sent to the central office of any pro-  
 “ ceeding to set aside the dissolution of a society,  
 “ not less than seven days before it is com-  
 “ menced, by the person by whom it is taken,  
 “ or of any order setting it aside, within seven  
 “ days after it is made by the society.”—39 & 40  
 Vict. c. 45, s. 17.

The above section, it is to be noticed, expressly provides that the Court having jurisdiction in the winding-up of societies registered under “The Industrial and Provident Societies Act, 1876,” shall be the County Court. And it was held, under previous Acts, that the Court of Chancery has no power to wind up industrial and provident societies which have not been registered. But that such societies must be first registered and then wound up in the County Court (p).

Construction of the above section.

A winding-up under “The Industrial and Provident Societies Act” may be of either of the three descriptions which will be found referred to in the chapter on winding-up—viz., compulsory, voluntary, or under the supervision of the Court.

Winding-up may be compulsory, voluntary, or under the supervision of the Court.

“The Industrial and Provident Societies Act, 1876” does not specify the County Court in which a petition for winding up societies under that Act shall be presented. But, with reference to proceedings to set aside a dissolution by consent under that Act, it is expressly provided that such proceedings shall be commenced “in the County Court of the district where the registered office of the society is situate.”

In what district winding-up proceedings should be taken.

As regards the fees payable in the winding-up of industrial and provident societies, it is presumed that the scale in operation under “The Industrial and Provident Societies Act, 1862” will be adopted, though no special scale of fees under “The Industrial and Provident Societies Act, 1876,” has yet been framed.

Fees under “The Industrial and Provident Societies Act, 1876.”

The details of the practice must be sought in the chapter devoted to winding-up (g). One or two remarks are, however, necessary here.

Practice.

(p) *Re Sheffield and Hallamshire, &c., Co-operative Soc.*, 34 L. J. Ch. 593; 11 Jur. N. S. 553; *Rotherhithe, &c., Industrial Society*, 32 Beav. 57; *Re Chatham Co-operative Industrial Soc.*, 52 L. J. Ch. 737; 4 N. R. 481; 12 W. R. 1053.

(g) *Post*, Division IV. cap. vii. ss. 1 and 2.

—In compulsory windings-up or windings-up under resolution.

In cases where there is a compulsory winding-up by order of the Court, or where a voluntary winding-up takes place under a resolution, the provisions of "The Companies Act, 1862," are expressly made applicable by sub-section 1 of section 17 (*qq*).

For the practice reference must be made to the chapter just mentioned.

In cases, however, where the winding-up is under an instrument of dissolution the practice is not now altogether so clear. Order XXXIX. of "The County Court Rules, 1876," which has already been set out in full (*rr*), expressly applied the provisions of "The Companies Act, 1862," to "The Industrial and Provident Societies Act, 1862." But the statute thus referred to is now repealed and replaced by the enactment now under consideration—"The Industrial and Provident Societies Act, 1876." Probably, notwithstanding this state of matters, "The Companies Act, 1862," and the rules thereunder, would be held applicable to the winding up of industrial and provident societies under an instrument of dissolution. In the event of their being inapplicable it would follow that, the Act being nowhere mentioned in the rules, the practice under it is governed by Order XL. (*r*), which directs that, in any case not otherwise provided for, the proceedings shall be by plaint and summons or by petition, and that the ordinary County Court rules shall govern them.

(*qq*) See *ante*, n. (*q*).

(*rr*) *Ante*, p. 982.

(*r*) Set out *ante*, p. 887.

## BOOK V.—DIVISION III.

### PROCEEDINGS UNDER SPECIAL STATUTES PROVIDING FOR THE SETTLEMENT OF DISPUTES.

#### CHAPTER VII.

##### JURISDICTION AND PROCEEDINGS UNDER "THE EMPLOYERS AND WORKMEN ACT, 1875."

In the year 1875 an Act of Parliament was passed—38 & 39 Vict. c. 90—the general object of which appears by its title in the Statute Book, in which it is described as "An Act to enlarge the Powers of County Courts in respect of Disputes between Employers and Workmen, and to give other Courts a limited Civil Jurisdiction in respect of such disputes."

It will be gathered from the above formal title to the Act that its objects are two-fold. First, it enlarges the jurisdiction of the County Court in disputes between employers and their workmen; secondly, it confers a civil jurisdiction in such matters upon certain Courts which for the most part exercise criminal jurisdiction only, and which are described in the Act as "Courts of summary jurisdiction" (a).

General outline of "The Employers and Workmen Act, 1875."

Act (1) enlarges County Court jurisdiction, and (2) confers civil jurisdiction on certain other Courts.

(a) The Act provides:—

"The expression 'Court of summary jurisdiction' means—

"(1.) As respects the city of London, the Lord Mayor or any alderman of the said city sitting at the Mansion House or Guildhall justice room; and

"(2.) As respects any police court division in the metropolitan police district, any metropolitan police magistrate sitting at the police court for that division; and

"(3.) As respects any city, town, liberty, borough, place, or district for which a stipendiary magistrate is for the time being acting, such stipendiary magistrate sitting at a police court or other place appointed in that behalf; and

"(4.) Elsewhere any justice or justices of the peace to whom jurisdiction is given by the Summary Jurisdiction Act: Provided that, as respects any case within the cognizance of such justice or justices as last aforesaid, a complaint under this Act shall be heard and determined and an order for imprisonment made by two or more justices of the peace in petty sessions sitting at some place appointed for holding petty sessions.

"Nothing in this section contained shall restrict the jurisdiction of the Lord Mayor or any alderman of the city of London, or of any metropolitan police or

Definition of "Court of Summary Jurisdiction." *The Employers and Workmen Act, 1875, s. 10.*

Only the County Court jurisdiction under Act to be here considered.

Short title.

*The Employers and Workmen Act, 1875,*  
s. 1.

Commencement of Act.

*Id.*, s. 2.  
Jurisdiction under the Act.

*Id.*, s. 3.

With the second of these objects—the civil jurisdiction conferred upon Courts of summary jurisdiction—the present work has no concern. Only those portions of the Act which relate to County Courts will be dealt with in this chapter. And these portions are as follow :—

“ This Act may be cited as ‘ The Employers and Workmen Act, 1875.’ ”—38 & 39 Vict. c. 90, s. 1.

“ This Act, except so far as it authorises any rules to be made or other thing to be done at any time after the passing of this Act, shall come into operation on the first day of September one thousand eight hundred and seventy-five.”—38 & 39 Vict. c. 90, s. 2.

“ In any proceeding before a County Court in relation to any dispute between an employer and a workman arising out of or incidental to their relation as such (which dispute is hereinafter referred to as a dispute under this Act) the Court may, in addition to any jurisdiction it might have exercised if this Act had not passed, exercise all or any of the following powers ; that is to say,

“ (1.) It may adjust and set off (*aa*) one against the other  
“ all such claims on the part either of the employer or of the workman, arising out of or incidental to the relation between them, as the Court may find to be subsisting, whether such claims are liquidated or unliquidated, and are for wages, damages, or otherwise ; and,

“ (2.) If, having regard to all the circumstances of the case, it thinks it just to do so, it may rescind any contract between the employer and the workman upon such terms as to the apportionment of wages or other sums due there-

“ have been awarded, or some part of such damages.

‘ The security shall be an undertaking by the defendant and one or more surety or sureties that the defendant will perform his contract, subject on non-performance to the payment of a sum to be specified in the undertaking.

‘ Any sum paid by a surety on behalf of a defendant in respect of a security under this Act, together with all costs incurred by such surety in respect of such security, shall be deemed to be a debt due to him from the defendant; and where such security has been given in or under the direction of a Court of summary jurisdiction, that Court may order payment to the surety of the sum which has so become due to him from the defendant.”—38 & 39 Vict. c. 90, s. 3.

The effect of the above section may briefly be summed up as follows :—

Effect of above section.

The Act enables any County Court in any proceeding before it to give summary jurisdiction in any dispute between an employer and workman arising out of or incidental to their relation as such, *in addition to* the summary jurisdiction which it may possess independently of the Act. (1.) To adjust and set-off, the one against the other, any claims on the part either of the employer or of the workman, arising out of or incidental to the relation between them; (2.) to rescind any contract between the employer and workman on such terms as it thinks just; and (3.) in any case where the Court might otherwise award damages for any breach of contract, if any, if the defendant is willing to give security for the performance by him of so much of the contract as remains unperformed, *with the consent of the plaintiff*, order the defendant to perform the contract in place of the whole or part of the damages to be awarded.

A dispute under this section has been held to include a claim by an employer for damage caused by his workman's absence without notice, no explanation having afterwards taken place between them.

As regards the persons who may be parties to proceedings under the Act, it is to be noted that the disputes contemplated by the statute are disputes “ between an employer and a workman arising out of or incidental to their relation as such.”

Parties.

Moreover, the interpretation clause (section 10) of the Act defines the word “ workman ” as follows :—

Meaning of term “ workman.”

The expression ‘ workman ’ does not include a domestic or

(b) 38 & 39 Vict c. 90, s. 3, subsect. (1), *supra*, p. 1012.

(c) *Ib.*, subsect. (2), *supra*, p. 1012.

(d) *Ib.*, subsect. (3), *supra*, pp. 1012, 1013.

(e) *Clemson v. Hubbard*, 33 L. T. Rep. N. S. 816.

*The Employers and Workmen Act, 1875, s. 10.*

No set-off against children and women, save for actual damage.

*The Employers and Workmen Act, 1875, s. 11.*

“menial servant, but save as aforesaid, means any person who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract be made before or after the passing of this Act, be express or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour.”—38 & 39 Vict. c. 90, s. 10.

“In the case of a child, young person, or woman subject to the provisions of ‘The Factory Acts, 1833 to 1874,’ any forfeiture on the ground of absence or leaving work shall not be deducted from or set-off against a claim for wages or other sum due for work done before such absence or leaving work, except to the amount of the damage (if any) which the employer may have sustained by reason of such absence or leaving work.”—38 & 39 Vict. c. 90, s. 11.

It is to be noticed that this section limits the employer’s right of set-off to the amount of damage (if any) which the employer may have sustained by reason of the absence or leaving work by a child, young person, or woman, subject to the provisions of the Factory Acts. However, in the recent case of *Gregson v. Watson* (*f*), which is a decision on this section of the Act, though the sum sought to be recovered by a female factory worker was more than the amount of damage sustained by the employer through the plaintiff’s default, the plaintiff was held not to be entitled to recover anything. The facts of the case are as follows:—The plaintiff, a female factory winder, was paid her wages every Saturday, computed by the number of sets she had wound off during the week ending on the preceding Wednesday. One of the rules of the defendant’s factory was



claim for wages or other sum due for work done, and that the County Court Judge was right. This decision is in accordance with the earlier case of *Saunders v. Whittle (g)*. There a workman was employed by the week, and his payment was computed by the hour, and he left his employer's service during the week. It was held that he could have no claim for wages he would have had at the end of it.

No special provisions are contained in "The Employers and Workmen Act, 1875," with regard to the district in which proceedings under the Act are to be taken. The selection of such district is accordingly governed by the ordinary rules, which will be found set out in an earlier chapter of this work (*h*).

Proceedings under the Act may, in accordance with Order XI., which has been set out in the Introductory Chapter to the present Book (*i*), be commenced either by action or by petition.

The practice in proceedings under the Act is the same as in ordinary cases, and will be found described in the Introductory Chapter just mentioned; and in the Second Book of this work.

A special defence or a counter-claim was, under the County Court Rules, 1875, expressly allowed to be set up although no notice thereof had been given as required by the rules (*k*). But this is now no longer the case (*k*). And in cases coming under

The district in which the proceedings must be taken.

Process to commence proceedings.

Practice.

Defence or counter-claim.

(*g*) 33 L. T. Rep. N. S. 816.

(*h*) *Ante*, Book II. cap. v., pp. 263 *et seq.*

(*i*) *Ante*, p. 887.

(*k*) "The County Court Rules, 1875," provided:—

"In any action between employers and workmen the Court may exercise any of the powers mentioned in subsection 3 of 'The Employers and Workmen Act, 1875,' although the parties may not have given any of the notices required by Orders IX. and X. of these rules."—Order XXXVII. r. 50.

The above rule has, however, been repealed by "County Court Rule, 1877," which is in the following terms:—

Order XXXVII. rule 50 (repealed).

#### COUNTY COURT RULE, 1877.

"Order XXXVII. of 'The County Court Rules, 1875,' is hereby amended, as follows:—

County Court Rule, 1877.

"The said Order shall be read as if Rule 50 therein, relating to the exercise by the Court of certain powers under 'The Employers and Workmen Act, 1875,' had not been made.

"We, GEORGE LAKE RUSSELL, JOHN BURY DARENT, JOHN WORLEDGE, RUPERT ALFRED KETTLE, and WILLIAM FURNER, being Judges of County Courts appointed to frame Rules and Orders for regulating the practice of the Courts and Forms of proceedings therein, under the 32nd section of 'The County Courts Act, 1856,' have, by virtue of the powers vested in us thereby, and of all other powers enabling us in this behalf, framed the foregoing Rule, and we do certify the same to the Lord Chancellor accordingly.

"G. L. RUSSELL.

"J. B. DARENT.

"J. WORLEDGE.

"RUPERT KETTLE.

"WILLIAM FURNER.

"I approve of this Rule to come into force in all County Courts on the 1st day of November, 1877.

"28th August, 1877.

CAIRNS, C."

the Act, notice of a special defence or of a counter-claim must be given in the usual manner, the practice as to which will be found fully detailed already (*l*).

Security.

The only matter of practice under the Act which requires special notice is the following provision as to the mode of giving security (*m*). And, no other rules having been prescribed, security is given in the same mode as in ordinary cases (*m*).

*The Em-  
ployers and  
Workmen  
Act, 1875.  
s. 8.*

“ A person may give security under this Act in a County Court or Court of summary jurisdiction by an oral or written acknowledgment in or under the direction of the Court of the undertaking or condition by which and the sum for which he is bound, in such manner and form as may be prescribed by any rule for the time being in force, and in any case where security is so given, the Court in or under the direction of which it is given may order payment of any sum which may become due in pursuance of such security.

“ The Lord Chancellor may at any time after the passing of this Act, and from time to time make, and when made, rescind, alter, and add to, rules with respect to giving security under this Act.”—38 & 39 Vict. c. 90, s. 8.

(*l*) See *ante*, Book II. cap. viii., p. 319, as to Special Defences, and p. 329, as to Counter-claims.

(*m*) As to the general mode of giving security see *ante*, Book II. cap. xi., pp. 378 *et seq.*

## BOOK V.—DIVISION III.

### PROCEEDINGS UNDER SPECIAL STATUTES PROVIDING FOR THE SETTLEMENT OF DISPUTES.

#### CHAPTER VIII.

##### JURISDICTION AND PROCEEDINGS UNDER "THE AGRICULTURAL HOLDINGS ACT, 1875."

It is intended in the present chapter to consider those provisions of "The Agricultural Holdings Act, 1875"—38 & 39 Vict. c. 92—under or in respect of which the County Courts exercise jurisdiction (a).

Division of  
the subject.

There are certain sections of "The Agricultural Holdings Act, 1875," which are of general application, and from a perusal of which the scheme of the Act may easily be ascertained. The following are the sections referred to :—

Enactments  
of "The  
Agricultural  
Holdings Act,  
1875," which  
are of general  
application.

"This Act may be cited as 'The Agricultural Holdings (England) Act, 1875.'"—38 & 39 Vict. c. 92, s. 1.

Short title.

"This Act shall commence from and immediately after the fourteenth day of February, one thousand eight hundred and seventy-six."—38 & 39 Vict. c. 92, s. 2.

*The Agri-  
cultural  
Holdings  
Act, 1875.*

"In this Act—

s. 1.

" 'Contract of tenancy' means a letting of land for a term

" of years, or for lives, or for lives and years, or from

" year to year, or at will :

Commence-  
of Act.

" 'Determination of tenancy' means the cesser of a con-

" tract of tenancy by reason of effluxion of time, or

" from any other cause :

Interpretation.

" 'Landlord' means the person for the time being entitled

*Id.*, s. 4.

" to possession of land subject to a contract of

" tenancy, or entitled to receipt of rent reserved by a

" contract of tenancy, whatever be the extent of his

(a) In pursuance of this object the principal sections of the Act to which it is probable that reference will be made in the County Court are set out *verbatim*. But the following sections of the Act are omitted as inapplicable to General County Court Practice, viz., the section by which the Act is applied to Crown Lands (sect. 45); to Lands of the Duchy of Lancaster (sect. 46); to Lands of the Duchy of Cornwall (sect. 47); and to Ecclesiastical and Charity Lands (sects. 48 to 50, both inclusive); and see also the Amendment Act of 1876; also sect. 51, by which a year's notice is required in tenancies affected by the Act, instead of six months' notice; and sect. 52, which gives a landlord a right to resume, by notice specifying the object, part of a holding if such part be required for certain improvements subject to compensation to the tenant to be assessed by arbitration *without* any appeal; and sect. 53 relating to Fixtures.

- “ interest, and although the land or his interest  
“ therein is incumbered or charged by himself or his  
“ settlor, or otherwise, to any extent ; the party to a  
“ contract of tenancy under which land is actually  
“ occupied being alone deemed to be the landlord in  
“ relation to the actual occupier :
- “ ‘ Tenant ’ means the holder of land under a contract of  
“ tenancy :
- “ ‘ Landlord ’ or ‘ tenant ’ includes the agent authorised in  
“ writing to act under this Act generally, or for any  
“ special purpose, and the executors, administrators,  
“ assigns, husband, guardian, committee of the estate,  
“ or trustees in bankruptcy, of a landlord or tenant :
- “ ‘ Holding ’ includes all land held by the same tenant of  
“ the same landlord for the same term under the same  
“ contract of tenancy :
- “ ‘ Absolute owner ’ means the owner or person capable  
“ of disposing, by appointment or otherwise, of the  
“ fee simple or whole interest of or in freehold, copy-  
“ hold, or leasehold land, although the land or his  
“ interest therein is mortgaged, encumbered, or  
“ charged to any extent :
- “ ‘ County Court ’ in relation to a holding, means the  
“ County Court within the district whereof the hold-  
“ ing or the larger part thereof is situate :
- “ ‘ Person ’ includes a body of persons and a corporation  
“ aggregate or sole.
- “ The designations of landlord and tenant shall, for the  
“ purposes of this Act, continue to apply to the parties to a  
“ contract of tenancy until the conclusion of any proceedings  
“ taken under this Act on the determination of the tenancy.”

“ SECOND CLASS.

- |   |  |
|---|--|
| <p>“ Boning of land with un-<br/>“ dissolved bones.<br/>“ Chalking of land.<br/>“ Clay-burning.</p> | <p>“ Claying of land.<br/>“ Liming of land.<br/>“ Marling of land.</p> |
|---|--|

“ THIRD CLASS.

- |  |  |
|--|--|
| <p>“ Application to land of pur-<br/>“ chased artificial or other<br/>“ purchased manure.<br/>“ Consumption on the hold-</p> | <p>“ ing by cattle, sheep, or<br/>“ pigs of cake or other<br/>“ feeding stuff not pro-<br/>“ duced on the holding.</p> |
|--|--|

“ he shall be entitled, subject to the provisions of this Act, to  
“ obtain, on the determination of the tenancy, compensation in  
“ respect of the improvement.”—38 & 39 Vict. c. 92, s. 5.

“ An improvement shall not in any case be deemed, for the  
“ purposes of this Act, to continue unexhausted beyond the  
“ respective times following after the year of tenancy in which  
“ the outlay thereon is made :

Time in  
which im-  
provement  
exhausted.

“ Where the improvement is of the first class, the end of  
“ twenty years :

*The Agri-  
cultural  
Holdings  
Act, 1875,  
s. 6.*

“ Where it is of the second class, the end of seven years :

“ Where it is of the third class, the end of two years.”—38  
& 39 Vict. c. 92, s. 6.

“ The amount of the tenant's compensation in respect of  
“ an improvement of the first class shall, subject to the pro-  
“ visions of this Act, be the sum laid out by the tenant on the  
“ improvement, with a deduction of a proportionate part thereof  
“ for each year while the tenancy endures after the year of  
“ tenancy in which the outlay is made and while the improve-  
“ ment continues unexhausted ; but so that where the land-  
“ lord was not, at the time of the consent given to the execu-  
“ tion of the improvement, absolute owner of the holding for  
“ his own benefit, the amount of the compensation shall not  
“ exceed a capital sum fairly representing the addition which  
“ the improvement, as far as it continues unexhausted at the  
“ determination of the tenancy, then makes to the letting value  
“ of the holding.”—38 & 39 Vict. c. 92, s. 7.

Amount of  
tenant's  
compensa-  
tion in first  
class.

*Ibid.*, s. 7.

“ The amount of the tenant's compensation in respect of an  
“ improvement of the second class shall, subject to the pro-  
“ visions of this Act, be the sum properly laid out by the  
“ tenant on the improvement, with a deduction of a propor-  
“ tionate part thereof for each year while the tenancy endures  
“ after the year of tenancy in which the outlay is made and  
“ while the improvement continues unexhausted.”—38 & 39  
Vict. c. 92, s. 8.

Amount of  
tenant's  
compensation  
in second  
class.

*Ibid.*, s. 8.

“ The amount of the tenant's compensation in respect of an  
“ improvement of the third class shall, subject to the pro-

Amount of  
tenant's

compensation  
in third  
class.

*The Agri-  
cultural  
Holdings  
Act, 1875,  
s. 9.*

Consent of  
landlord for  
first class.

*Id.*, s. 10.

Deduction  
in first class  
for want of  
repair, &c.

*Id.*, s. 11.

Notice to  
landlord for  
second class.

*Id.*, s. 12.

Exclusion of  
compensation  
in third class  
after exhaust-  
ing crop.

*Id.*, s. 13.

Exclusion of  
compensation  
for consump-  
tion of cake,  
&c., in cer-  
tain cases.

*Id.*, s. 14.

Restrictions  
as to third  
class.

*Id.*, s. 15.

“visions of this Act, be such proportion of the sum properly  
“laid out by the tenant on the improvement as fairly repre-  
“sents the value thereof at the determination of the tenancy  
“to an incoming tenant.”—38 & 39 Vict. c. 92, s. 9.

“The tenant shall not be entitled to compensation in  
“respect of an improvement of the first class, unless he has  
“executed it with the previous consent in writing of the land-  
“lord.”—38 & 39 Vict. c. 92, s. 10.

“In the ascertainment of the amount of the tenant’s com-  
“pensation in respect of an improvement of the first class,  
“there shall be taken into account, in reduction thereof, any  
“sum reasonably necessary to be expended for the purpose of  
“putting the same into tenantable repair or good condition.”—  
38 & 39 Vict. c. 92, s. 11.

“The tenant shall not be entitled to compensation in respect  
“of an improvement of the second class, unless not more than  
“forty-two and not less than seven days before beginning to  
“execute it, he has given to the landlord notice in writing of  
“his intention to do so, nor where it is executed after the  
“tenant has given or received notice to quit, unless it is exe-  
“cuted with the previous consent in writing of the landlord.”  
—38 & 39 Vict. c. 92, s. 12.

“The tenant shall not be entitled to compensation in respect  
“of an improvement of the third class, where, after the execu-  
“tion thereof, there has been taken from the portion of the  
“holding on which the same was executed, a crop of corn,  
“potatoes, hay, or seed, or any other exhausting crop.”—  
38 & 39 Vict. c. 92, s. 13.

“The tenant shall not be entitled to compensation in respect  
“of an improvement of the third class, consisting in the con-  
“sumption of cake or other feeding stuff, where, under the  
“custom of the country or an agreement, he is entitled to and  
“claims payment from the landlord or incoming tenant in  
“respect of the additional value given by that consumption to  
“the manure left on the holding at the determination of the  
“tenancy.”—38 & 39 Vict. c. 92, s. 14.

“In the ascertainment of the amount of compensation in  
“respect of an improvement of the third class,—

“(1.) There shall not be taken into account any larger  
“outlay during the last year of the tenancy than  
“the average amount of the tenant’s outlay for  
“like purposes during the three next preceding  
“years of the tenancy, or other less number of  
“years for which the tenancy has endured; and,

“(2.) There shall be deducted the value of the manure  
“that would have been produced by the con-  
“sumption on the holding of any hay, straw,  
“roots, or green-crops sold off the holding  
“within the last two years of the tenancy or

“other less time for which the tenancy has  
“endured, except as far as a proper return  
“of manure to the holding has been made in  
“respect of such produce sold off.”—38 & 39  
Vict. c. 92, s. 15.

“The amount of the tenant’s compensation shall be subject  
“to the following deductions :

Deductions  
from com-  
pensation for  
taxes, rent,  
&c.

“(1.) For taxes, rates, and tithe-rentcharge due or be-  
“coming due in respect of the holding to which  
“the tenant is liable as between him and the  
“landlord :

*The Agri-  
cultural  
Holdings  
Act, 1875,*  
s. 16.

“(2.) For rent due or becoming due in respect of the  
“holding :

“(3.) For the landlord’s compensation under this Act.”  
—38 & 39 Vict. c. 92, s. 16.

“In the ascertainment of the amount of the tenant’s com-  
“pensation there shall be taken into account in reduction  
“thereof any benefit which the landlord has given or allowed  
“to the tenant in consideration of the tenant executing the  
“improvement.”—38 & 39 Vict. c. 92, s. 17.

Set-off of  
benefit to  
tenant.  
*Id.*, s. 17.

“Where a landlord commits a breach of covenant or other  
“agreement connected with the contract of tenancy, and the  
“tenant claims under this Act compensation in respect of an  
“improvement, then the tenant shall be entitled to obtain, on  
“the determination of the tenancy, compensation in respect of  
“the breach, subject and according to the provisions of this  
“Act.”—38 & 39 Vict. c. 92, s. 18.

Tenant’s  
compensation  
for breach of  
covenant.  
*Id.*, s. 18.

“Where a tenant commits or permits waste, or commits a  
“breach of a covenant or other agreement connected with the  
“contract of tenancy, and the tenant claims compensation  
“under this Act in respect of an improvement, then the land-  
“lord shall be entitled, by counter-claim, but not otherwise, to  
“obtain, on the determination of the tenancy, compensation in  
“respect of the waste or breach, subject and according to the  
“provisions of this Act.

Landlord’s  
title to com-  
pensation.  
*Id.*, s. 19.

“But nothing in this section shall enable a landlord to  
“obtain under this Act compensation in respect of waste or a  
“breach committed or permitted in relation to a matter of  
“husbandry more than four years before the determination of  
“the tenancy.”—38 & 39 Vict. c. 92, s. 19.

“Notwithstanding anything in this Act, a tenant shall not  
“be entitled to compensation under this Act unless one month  
“at least before the determination of the tenancy he gives  
“notice in writing to the landlord of his intention to make a  
“claim for compensation under this Act.

Notice of  
intended  
claim.  
*Id.*, s. 20.

“Where a tenant gives such a notice the landlord may,  
“before the determination of the tenancy, or within fourteen  
“days thereafter, give a counter-notice in writing to the tenant  
“of his intention to make a claim for compensation under this  
“Act.

No restriction  
on contract.

*The Agri-  
cultural  
Holdings  
Act, 1875,  
s. 54.*

Adoption of  
parts of Act  
by agreement.  
*Id.*, s. 55.

Application of  
Act to future  
tenancies.

*Id.*, s. 56.

“Every such notice and counter-notice shall state, as far as reasonably may be, the particulars of the intended claim.”—38 & 39 Vict. c. 92, s. 20.

“Nothing in this Act shall prevent a landlord and tenant, or intending landlord and tenant, from entering into and carrying into effect any such agreement as they think fit, or shall interfere with the operation thereof.”—38 & 39 Vict. c. 92, s. 54.

“A landlord and tenant, whether the landlord is absolute owner of the holding for his own benefit or not, may, in any agreement in writing relating to the holding, adopt by reference any of the provisions of this Act respecting procedure or any other matter, without adopting all the provisions of this Act; and any provision so adopted shall have effect in connection with the agreement accordingly.

“But where, at the time of the making of the agreement, the landlord is not absolute owner of the holding for his own benefit, no charge shall be made on the holding, under this Act, by virtue of the agreement, greater than, or different in nature or duration from, the charge which might have been made thereon, under this Act, in the absence of the agreement.”—38 & 39 Vict. c. 92, s. 55.

“This Act shall apply to every contract of tenancy beginning after the commencement of this Act, unless, in any case, the landlord and tenant agree in writing, in the contract of tenancy, or otherwise, that this Act, or any part or provision of this Act, shall not apply to the contract; and, in that case, this Act, or the part or provision thereof to which that agreement refers (as the case may be), shall not apply to the contract.”—38 & 39 Vict. c. 92, s. 56.

Application “In any case of a contract of tenancy from year to year or



"respect of the same work or thing."—38 & 39 Vict. c. 92, s. 59.

*The Agricultural Holdings Act, 1875.*  
s. 59.

"Except as in this Act expressed, nothing in this Act shall take away, abridge, or prejudicially affect any power, right, or remedy of a landlord, tenant, or other person, vested in or exercisable by him by virtue of any other Act or law, or under any custom of the country, or otherwise, in respect of a contract of tenancy or other contract, or of any improvement, waste, emblements, tillages, away-going crops, fixtures, tax, rate, tithe-rentcharge, rent, or other thing."—38 & 39 Vict. c. 92, s. 60.

General saving of rights.

*Id.*, s. 60.

"Any notice, request, demand, or other instrument under this Act may be served on the person to whom it is to be given, either personally or by leaving it for him at his last known place of abode in England, or by sending it through the post in a registered letter addressed to him there; and if so sent by post it shall be deemed to have been served at the time when the letter containing it would be delivered in ordinary course; and in order to prove service by letter it shall be sufficient to prove that the letter was properly addressed and posted, and that it contained the notice, request, demand, or other instrument to be served."—38 & 39 Vict. c. 92, s. 41.

Service of notice, &c.

*Id.*, s. 41.

"The costs of proceedings in the County Court under this Act shall be in the discretion of the Court.

Costs in County Court.

"The Lord Chancellor may from time to time prescribe a scale of costs for those proceedings, and of costs to be taxed by the registrar of the Court."—38 & 39 Vict. c. 92, s. 40.

*Id.*, s. 40.

The jurisdiction of the County Court under "The Agricultural Holdings Act, 1875," has reference to (1) Proceedings with regard to references and awards under the Act; (2) The appointment for the purposes of the Act of guardians to infants and next friends to married women; and (3) The allowance as a charge on the holding of money paid for tenant's improvements. It will be convenient to deal separately with each of these matters.

Summary of County Court jurisdiction under the Act.

#### SECTION I.—PROCEEDINGS UNDER THE AGRICULTURAL HOLDINGS ACT AS TO REFERENCES AND AWARDS.

The jurisdiction of the County Court as regards references under "The Agricultural Holdings Act, 1875," may be shortly summed up as follows:—The Court has jurisdiction (1) to entertain an appeal from an award; (2) to appoint (in certain cases) an arbitrator or an umpire; (3) to extend the time for an umpirage; (4) to tax the costs of a reference under the Act; and (5) to enforce an award under the Act.

Summary of County Court jurisdiction as regards references under "The Agricultural Holdings Act."

Sections conferring such jurisdiction.

Appointment of arbitrators and umpire in references under the c t.

*The Agricultural Holdings Act, 1875, s. 22.*

The sections of the Act by which the jurisdiction, thus shortly summarised, is conferred are as follows :—

“ Where there is a reference under this Act, a referee, or two referees and an umpire, shall be appointed as follows :

“ (1.) If the parties concur, there may be a single referee appointed by them jointly.

“ (2.) If before award the single referee dies or becomes incapable of acting, or for seven days after notice from the parties, or either of them, requiring him to act, fails to act, the proceedings shall begin afresh, as if no referee had been appointed :

“ (3.) If the parties do not concur in the appointment of a single referee, each of them shall appoint a referee :

“ (4.) If before award one of two referees dies or becomes incapable of acting, or for seven days after notice from either party requiring him to act, fails to act, the party appointing him shall appoint another referee :

“ (5.) Notice of every appointment of a referee by either party shall be given to the other party :

“ (6.) If for fourteen days after notice by one party to the other to appoint a referee, or another referee, the other party fails to do so, then, on the application of the party giving notice, the County Court shall within fourteen days appoint a competent and impartial person to be a referee :

“ (7.) Where two referees are appointed, then (subject to the provisions of this Act) they shall before

“ Commissioners for England and Wales, then by County Court.  
 “ the umpire, and any successor to him, shall be  
 “ appointed, on the application of either party, *The Agricultural Holdings*  
 “ by those Commissioners: *Act, 1875,*  
*s. 23.*

“(2.) In every other case, if either party, on appointing  
 “ a referee, requires, by notice in writing to the  
 “ other, that the umpire shall be appointed by  
 “ the County Court, then, unless the other party  
 “ dissents by notice in writing therefrom, the  
 “ umpire, and any successor to him, shall, on  
 “ the application of either party, be so appointed,  
 “ and in case of such dissent, the umpire, and  
 “ any successor to him, shall be appointed, on  
 “ the application of either party, by the Inclo-  
 “ sure Commissioners for England and Wales.”  
 —38 & 39 Vict. c. 92, s. 23.

“ The powers of the County Court under this Act, relative to  
 “ the appointment of a referee or umpire shall be exerciseable  
 “ by the judge of the Court having jurisdiction, whether he is  
 “ without or within his district, and may, by consent of the  
 “ parties, be exercised by the registrar of the Court.”—38 &  
 39 Vict. c. 92, s. 24. *And Judge or by consent registrar of County Court may appoint umpire at any place.*

“ The delivery to a referee of his appointment shall be  
 “ deemed a submission to a reference by the party delivering  
 “ it; and neither party shall have power to revoke a submis-  
 “ sion, or the appointment of a referee, without the consent of  
 “ the other.”—38 & 39 Vict. c. 92, s. 25. *Id., s. 24. Appointments of arbitrators irrevocable.*

“ The referee or referees or umpire may call for the produc-  
 “ tion of any sample, or voucher or other document, or other  
 “ evidence which is in the possession or power of either party,  
 “ or which either party can produce, and which to the referee  
 “ or referees or umpire seems necessary for determination of  
 “ the matters referred, and may take the examination of the  
 “ parties and witnesses on oath, and may administer oaths and  
 “ take affirmations; and if any person so sworn or affirming  
 “ wilfully and corruptly gives false evidence he shall be guilty  
 “ of perjury.”—38 & 39 Vict. c. 92, s. 26. *Evidence before arbitrators.*

“ The referee or referees or umpire may proceed in the  
 “ absence of either party where the same appears to him or  
 “ them expedient, after notice given to the parties.”—38 & 39  
 Vict. c. 92, s. 27. *Id., s. 26. Arbitration may proceed ex parte.*

“ The award shall be in writing, signed by the referee or  
 “ referees or umpire.”—38 & 39 Vict. c. 92, s. 28. *Id., s. 27. Award to be written.*

“ A single referee shall make his award ready for delivery  
 “ within twenty-eight days after his appointment. *Id., s. 28. Within what time award to be made by arbitrators.*

“ Two referees shall make their award ready for delivery  
 “ within twenty-eight days after the appointment of the last  
 “ appointed of them, or within such extended time (if any) as  
 “ they from time to time jointly fix by writing under their  
*Id., s. 29.*

—Or by  
umpire.

*The Agricultural  
Holdings  
Act, 1875,  
s. 30.*

Form and  
contents of  
awards.

*Id.*, s. 31.

“hands, so that they make their award ready for delivery  
“within a time not exceeding in the whole forty-nine days  
“after the appointment of the last appointed of them.”—38 &  
39 Vict. c. 92, s. 29.

“Where two referees are appointed and act, if they fail to  
“make their award ready for delivery within the time afore-  
“said, then, on the expiration of that time, their authority  
“shall cease, and thereupon the matters referred to them shall  
“stand referred to the umpire.

“The umpire shall make his award ready for delivery within  
“twenty-eight days after notice in writing given to him by  
“either party or referee of the reference to him, or within such  
“extended time (if any) as the registrar of the County Court  
“from time to time appoints, on the application of the umpire  
“or of either party, made before the expiration of the time  
“appointed by or extended under this section.”—38 & 39 Vict.  
c. 92, s. 30.

“The award shall find and state the time at which each  
“improvement, in respect whereof compensation is awarded, is  
“taken, for the purposes of the award, to be exhausted.”—38  
& 39 Vict. c. 92, s. 31.

“The award shall not award a sum generally for compensa-  
“tion, but shall, as far as reasonably may be, specify—

“The several improvements, acts, and things in respect  
“whereof compensation is awarded;

“The time at which each thereof was executed, committed,  
“or permitted;

“In the case of an improvement of the first class, where  
“the landlord was not at the time of the consent  
“given to the execution thereof absolute owner of  
“the holding for his own benefit, the extent to which

“ party, but that taxation shall be subject to review by the Judge of the County Court.”—38 & 39 Vict. c. 92, s. 33.

“ The award shall fix a day, not sooner than one month after the delivery of the award, for the payment of money awarded for compensation, costs, or otherwise.”—38 & 39 Vict. c. 92, s. 34.

“ A submission or award shall not be made a rule of any Court, or be removable by any process into any Court, and an award shall not be questioned otherwise than as provided by this Act.”—38 & 39 Vict. c. 92, s. 35.

“ Where the sum claimed for compensation exceeds fifty pounds, either party may, within seven days after delivery of the award, appeal against it to the Judge of the County Court on all or any of the following grounds :

“ 1. That the award is invalid ;

“ 2. That compensation has been awarded for improvements, acts, or things, breaches of covenants or agreements, or for committing or permitting waste, in respect of which the party claiming was not entitled to compensation ;

“ 3. That compensation has not been awarded for improvements, acts, or things, breaches of covenants or agreements, or for committing or permitting waste, in respect of which the party claiming was entitled to compensation ;

“ and the Judge shall hear and determine the appeal, and may, in his discretion, remit the case to be reheard as to the whole or any part thereof by the referee or referees or umpire, with such directions as he may think fit.

“ If no appeal is so brought, the award shall be final.

“ The decision of the Judge of the County Court on appeal shall be final, save that the Judge shall, at the request of either party, state a special case on a question of law for the judgment of the High Court of Justice, and the decision of the High Court on the case, and respecting costs and any other matter connected therewith, shall be final, and the Judge of the County Court shall act thereon.”—38 & 39 Vict. c. 92, s. 36.

“ Where any money agreed or awarded or ordered on appeal to be paid for compensation, costs, or otherwise, is not paid within fourteen days after the time when it is agreed or awarded or ordered to be paid, it shall be recoverable, upon order made by the Judge of the County Court, as money ordered by a County Court under its ordinary jurisdiction to be paid is recoverable.”—38 & 39 Vict. c. 92, s. 37.

The practice is not precisely the same under each of the five heads of jurisdiction already pointed out to exist ; and it will be most convenient to state separately and distinctly the practice under each such head.

Times for payment to be fixed.

*The Agricultural Holdings Act, 1875, s. 34.*

Award not to be made a rule of Court.

*Id.*, s. 35.

Appeal may be made to County Court from award of referee or umpire.

*Id.*, s. 36.

Award may be enforced by County Court.

*Id.*, s. 37.

Practice varies according to nature of jurisdiction.

(1.) Practice in appeals against awards.

Parties to be called "appellant" and "respondent."

Order XXXIV. rule 1.

Appellant within four days from award to file a copy of it with a "concise statement" of grounds of appeal.

Order XXXIV. rule 2.

The practice in ordinary actions is, by Order XXXV. (b), expressly made applicable to appeals from awards made under "The Agricultural Holdings Act," and to other proceedings under that Act, except so far as the rules contain any special powers. Such practice will be readily understood (so far as it presents any peculiarities) from the following provisions relating to the subject, with the aid of an occasional explanatory foot-note :—

"When an appeal is made to the Judge against an award made under 'The Agricultural Holdings (England) Act, 1875,' the party prosecuting the appeal shall be called the "appellant and the party supporting the award the respondent." —Order XXXIV. r. 1.

"The appellant shall, within four days after the delivery of the award, file (bb) a copy thereof, together with a concise statement in writing of his grounds of appeal, which shall contain the following particulars :

"(1.) If the appeal shall be made on the ground mentioned in section 36, sub-section 1, of the last-mentioned Act, a statement of the several objections to the validity of the award on which he relies :

"(2.) If the appeal is on any of the grounds mentioned in sub-section 2 of the last-mentioned section, a statement showing in respect of what matters compensation is alleged to have been improperly awarded :

"(3.) If the appeal is made on any of the grounds mentioned in sub-section 3 of the last-mentioned section, a statement showing in respect of what matters compensation is alleged to have been

“with the provisions of the next following rule, according to the form in the schedule.”—Order XXXIV. r. 3.

The form of such a statement as is required by the above rule will be found in the Appendix of Forms (*d*).

“The respondent shall, within eight days after the transmission of the grounds of appeal to him, deliver to the registrar a statement in writing signed by himself or his solicitor disclosing the following matters—

“(1.) Whether he disputes the validity in law of all, or any, and which of the grounds of objection to the award :

“(2.) Whether he disputes the truth in fact of all, or any, and which of the grounds of appeal :

“(3.) Whether he admits the validity in law and truth in fact of all, or any, and which of the grounds of appeal :

“(4.) Whether he prays that the case may be remitted to be re-heard :

“(5.) His name and address, and that of his solicitor, if the statement be delivered through a solicitor.”—Order XXXIV. r. 4.

“Upon the receipt of the statement mentioned in the next preceding rule (*e*), the registrar shall transmit a copy thereof and of the award and grounds of appeal to the Judge, who shall, as soon as conveniently may be, appoint a time and place for the hearing of the appeal and instruct the registrar to give notice thereof forthwith to the parties.”—Order XXXIV. r. 6.

Any interlocutory proceedings which may become necessary take place in the usual way. And any documents requiring service may be served as directed by section 41, already set out (*f*).

“The Judge shall hear and determine the appeal, and the order thereupon may be enforced in the same manner as any other judgment of the Court.”—Order XXXIV. r. 5.

“The costs of proceedings in the County Court under this Act shall be in the discretion of the Court.

“The Lord Chancellor may from time to time prescribe a scale of costs for those proceedings, and of costs to be taxed by the registrar of the Court.”—38 & 39 Vict. c. 92, s. 40.

The form of a judgment or order is contained in the Appendix (*g*).

It will be recollected that section 36 of the Act (*h*) allows

Order  
XXXIV.  
rule 3.

Form.

Respondent  
within eight  
days to send  
a written  
statement to  
registrar.

Order  
XXXIV.  
rule 4.

Respondent's  
statement to  
be sent to  
Judge.  
Place and  
time of hear-  
ing to be ap-  
pointed and  
notice given.

Order  
XXXIV.  
rule 6.

Interlocutory  
proceedings.  
Order at  
hearing.

Order  
XXXIV.  
rule 5.

Costs in  
County Court.

The Agri-  
cultural  
Holdings  
Act, 1875,  
s. 40.

Form of  
judgment.

(*d*) Appendix II. Form 240.

(*e*) Doubtless Rule 5 is that meant by “next preceding.”

(*f*) *Supra*, p. 1023.

(*g*) Appendix II. Form 241.

(*h*) As to the Rules in force regulating Appeals by Special Case see *ante*, Book II. cap. xvii. s. 2, pp. 551 *et seq.*

**Appeals.**

the County Court Judge to state a special case by way of appeal. With reference to such appeals it is provided as follows :—

*Order  
XXXIV.  
rule 8.*

“ All rules for the time being in force regulating the conduct of appeals by way of special case shall apply to appeals from the Judge to the High Court of Justice, so far as circumstances will permit.”—Order XXXIV. r. 8.

The following rule regulates the practice on applications under the Act (i) for the appointment of an arbitrator or an umpire :—

*(2.) Practice  
on applications  
to appoint an  
arbitrator or  
an umpire.*

*Order  
XXXIV.  
rule 7.*

“ Every application for the appointment of a referee or umpire under section twenty-two, sub-sections six and nine, or under section twenty-three, sub-section two, of the Act, shall be by summons sealed with the seal of the Court, and returnable not less than seven days from the date thereof, except by consent. Such summons shall be taken out by the party applying, and shall be addressed to the other party, and shall direct the party summoned to attend at the Judge’s or registrar’s chambers (as the case may be) on the return day thereof, for the purpose of proceeding with the appointment asked for. Such summons shall be personally served by the applicant’s solicitor. The appointment may be made by endorsement on the summons.”—Order XXXIV. r. 7.

*Form of  
summons.*

The form of summons under the above rule may be framed from a form in the Appendix (k).

*Practice in  
other cases.*

Save as regards appeal from awards and applications for the appointment of an arbitrator or an umpire, it is not necessary to describe the practice of the County Court in cases under “The Agricultural Holdings Act” (l).

*(3.)—Extension of time  
for umpirage*

The extension of the time for making an umpirage under section 30 may be obtained in a summary way, or on applica-



SECTION II.—THE APPOINTMENT UNDER THE AGRICULTURAL HOLDINGS ACT OF GUARDIANS TO INFANTS OR PERSONS OF UNSOUND MIND, AND OF NEXT FRIENDS TO MARRIED WOMEN.

“The Agricultural Holdings (England) Act, 1875,” with regard to guardians for infants and lunatics, enacts as follows :—

“Where a landlord or tenant is an infant without a guardian, or is of unsound mind, not so found by inquisition, the County Court, on the application of any person interested, may appoint a guardian of the infant or person of unsound mind for the purposes of this Act, and may change the guardian if and as occasion requires.”—38 & 39 Vict. c. 92, s. 38.

Guardians may be appointed by County Court to infants and lunatics not so found by inquest. *The Agricultural Holdings Act, 1875, s. 38.*

As to the appointment of next friends to married women, “The Agricultural Holdings (England) Act,” provides as follows :—

“The County Court may appoint a person to act as the next friend of a married woman for the purposes of this Act, and may remove or change that next friend if and as occasion requires.”

—Or next friends to married women. *Id.*, s. 30.

“A married woman entitled for her separate use, and not restrained from anticipation, shall, for the purposes of this Act, be in respect of land as if she was unmarried.”

“Where any other married woman is desirous of doing any act under this Act, her husband’s concurrence shall be requisite, and she shall be examined apart from him by the County Court, or by the Judge of the County Court for the place where she for the time being is, touching her knowledge of the nature and effect of the intended act, and it shall be ascertained that she is acting freely and voluntarily.”—38 & 39 Vict. c. 92, s. 39.

Proceeding under either of the two sections just cited (*p*), except the acknowledgments of married women, is the same as in ordinary actions, and can be ascertained from the Introductory Chapter to the present Book (*q*).

Practice.

SECTION III.—THE ALLOWANCE OF CHARGES ON THE HOLDING OF PAYMENTS MADE FOR TENANTS’ IMPROVEMENTS.

“The Agricultural Holdings (England) Act, 1875,” provides as follows :—

“A landlord, on paying to the tenant the amount of com-

Landlord who has paid tenant for improvements

(*p*) See Ord. xxxviii. set out *ante*, p. 987.

(*q*) At p. 886, *ante*, et seq.

under Act  
may obtain a  
charge on the  
holding.

*The Agri-  
cultural  
Holdings  
Act, 1875,  
s. 42.*

“pensation due to him under this Act, may obtain from the  
County Court a charge on the holding in respect thereof.

“The Court shall have power, on proof of the payment, and  
on being satisfied of the observance in good faith by the  
parties of the conditions imposed by this Act, to make an  
order charging the holding with repayment of the amount  
paid, or any part thereof, with such interest, and by such  
instalments, and with such directions for giving effect to the  
charge, as the Court thinks fit.

“But, where the landlord obtaining the charge is not abso-  
lute owner of the holding for his own benefit, no instalment  
or interest shall be made payable after the time when the  
improvement in respect whereof compensation is paid will, for  
the purposes of this Act, be taken to be exhausted.

“The instalments and interest shall be charged in favour of  
the landlord, his executors, administrators, and assigns.”—  
38 & 39 Vict. c. 92, s. 42.

Land im-  
provement  
companies  
may advance  
amount of the  
charge.

*Id.*, s. 43.

“Any company now or hereafter incorporated by Parliament,  
and having power to advance money for the improvement of  
land, may take an assignment of any charge made by a  
County Court under the provisions of this Act, upon such  
terms and conditions as may be agreed upon between such  
company and the person entitled to such charge; and such  
company may assign any charge so acquired by them to any  
person or persons whomsoever.”—38 & 39 Vict. c. 92, s. 43.

Charge to  
affect interests  
subsequent to  
landlord's.

*Id.*, s. 44.

“The sum charged by the order of a County Court under  
this Act shall be a charge on the holding for the landlord's  
interest therein, and for all interests therein subsequent to  
that of the landlord; but so that the charge shall not extend  
beyond the landlord's interest where the landlord is himself  
a tenant of the holding.”—38 & 39 Vict. c. 92, s. 44.

## BOOK V.—DIVISION III.

### PROCEEDINGS UNDER SPECIAL STATUTES PROVIDING FOR THE SETTLEMENT OF DISPUTES.

#### CHAPTER IX.

##### PROCEEDINGS TO ASSESS COMPENSATION PAYABLE UNDER "THE ARMY DISCIPLINE AND REGULATION ACT, 1879."

"THE Army Discipline and Regulation Act, 1879" (42 & 43 Vict. c. 43), takes the place of the previous "Mutiny Acts," and was passed for the purpose of amending the law relating to the discipline and regulation of the army (*a*). It is divided into five parts, and deals with many matters which need not be referred to in the present treatise. Part III. of the Act relates (amongst other things), however, to the billeting and impressment of carriages; and, besides containing various important provisions in regard to the supply of carriages, animals, and drivers, which may be required from time to time, for military purposes (*b*), likewise contains a special provision which confers jurisdiction upon the County Court Judge.

"The Army Discipline and Regulation Act, 1879," empowers a justice of the peace to issue warrants for the supply of carriages, &c., for regimental baggage and stores on the march, on the demand of a commanding officer of regular forces, or of an officer authorised by him. The section of the Act, conferring this jurisdiction on justices, is as follows:—

"Every justice of the peace in the United Kingdom having jurisdiction in any place mentioned in a route issued to the commanding officer of any portion of Her Majesty's regular forces shall, on the demand of such commanding officer, or of an officer or non-commissioned officer authorised by him, and on production of such route, issue his warrant requiring some constable or constables having authority in such place to provide, within a reasonable time to be named in the warrant,

Objects of  
"The Army  
Discipline  
Act, 1879."

Power of  
Justice of  
the Peace to  
issue warrant  
for impress-  
ment of car-  
riages, &c.,  
for military  
purposes.

*The Army  
Discipline  
and Regu-  
lation Act,  
1879, s. 109.*

(*a*) Preamble.

(*b*) See 42 & 43 Vict. c. 33, ss. 109 to 118.

“ such carriages, animals, and drivers as are stated to be required for the purpose of moving the regimental baggage and regimental stores of the forces mentioned in the route in accordance with the route ; and the constable or constables shall execute such warrant, and persons having carriages and animals suitable for the said purpose shall, when ordered by a constable in pursuance of such warrant, furnish the same in a state fit for use for the aforesaid purpose.


“ The route for the purpose of this section shall be such route as is mentioned in the foregoing provisions of this part of this Act with respect to billeting.

“ A route purporting to be issued and signed as required by those provisions, if delivered to an officer or non-commissioned officer by his commanding officer, shall be a sufficient authority to such officer or non-commissioned officer to demand carriages and animals in pursuance of this Act, and when produced by an officer or non-commissioned officer shall be conclusive evidence to a justice and constable of the authority of the officer or non-commissioned officer producing the same to demand carriages and animals in accordance with such route.

“ The warrant ordering carriages, animals, and drivers to be provided shall specify the number and description of the carriages, and also the places from and to which the same are to travel, and the distances between such places.

“ When sufficient carriages or animals cannot be procured within the jurisdiction of the said justice, any justice having jurisdiction in the next adjoining place shall, by a like course of proceeding, supply the deficiency.

“ A fee of one shilling and no more shall be paid for the warrant by the officer or non-commissioned officer



- “(3.) In Ireland the grand jury for a county, a county of  
 “ a city, a county of a town and city, or a city  
 “ or town and county, also any council of any  
 “ such county, town or city having by law the  
 “ fiscal powers of a grand jury,  
 “ may from time to time, as respects places within their juris-  
 “ diction, by order increase the rates authorised in the said  
 “ schedule by such amount in respect of each rate, not exceed-  
 “ ing one-third, as may seem reasonable, and the amount of  
 “ such increase shall be notified in writing by the justice grant-  
 “ ing a warrant in pursuance of this Act to the person demand-  
 “ ing the warrant.  
 “ The order shall specify the average price of hay and oats at  
 “ the nearest market town at the time of fixing such increased  
 “ rates, and the order shall not be in force for more than ten  
 “ days beyond the next meeting of such authority, but may be  
 “ renewed from time to time by a fresh order or orders, and  
 “ while in force shall have effect as part of the said schedule.  
 “ A copy of every such order, duly authenticated, shall be  
 “ transmitted to a Secretary of State within three days after the  
 “ making thereof.  
 “ The officer or non-commissioned officer who demands car-  
 “ riages, or animals in pursuance of this part of this Act, shall  
 “ pay the sums due in respect of the same to the owners or  
 “ drivers of the carriages or animals, and one-third part of such  
 “ payment shall in each case, if required, be made before the  
 “ carriage is loaded; and such payments shall be made, if  
 “ required, in the presence of a justice or constable.  
 “ If an officer or non-commissioned officer is from any cause  
 “ unable to pay the amount due to the owner or driver of any  
 “ carriage or animal, he shall make up with such owner or  
 “ driver and sign an account of the amount due to him, and  
 “ forthwith transmit the account so signed to a Secretary of  
 “ State, who shall forthwith cause the amount named therein  
 “ to be paid to such owner or driver.”—42 & 43 Vict. c. 33,  
 s. 110.

The schedule in question is set out in the foot-note, and it will be seen that it contains a table of rates of payment as to carriages and animals, and likewise certain regulations on the same subject (c).

(c) “FOURTH SCHEDULE.

“IMPRESSMENT OF CARRIAGES.

“TABLE OF RATES OF PAYMENT FOR CARRIAGES AND ANIMALS.

Carriages and Animals.	Rate per Mile.
<i>“ In Great Britain.</i>	
A waggon with four or more horses, or a wain with six oxen, or four oxen and two horses.	One Shilling.
A waggon with narrow wheels, or a cart with four horses, carrying not less than fifteen hundredweight.	Ninepence.
Any other cart or carriage, with less than four horses, and not carrying fifteen hundredweight.	Sixpence.

Differences as to payment for carriages, &c., to be assessed by a County Court Judge.

*The Army Discipline and Regulation Act, 1879,*  
s. 112.

“The Army Discipline and Regulation Act, 1879,” in addition to the clauses already set out, contains a special section, by which it is provided that a Secretary of State shall cause due payment to be made for carriages, animals, and vessels furnished in pursuance of the said section, and that any difference respecting the amount of payment for the same, shall be determined by a County Court Judge having jurisdiction in any place in which such carriage, animal, or vessel was furnished, or through which it travelled in pursuance of the requisition of emergency. The section conferring the jurisdiction, thus briefly described, is as follows :—

“Her Majesty by order, distinctly stating that a case of emergency exists, and signified by a Secretary of State, and also in Ireland the Lord Lieutenant by a like order, signified by the Chief Secretary or Under Secretary, may authorise any general or field officer commanding Her Majesty’s regular forces in any military district or place in the United Kingdom to issue a requisition under this section (hereinafter referred to as a requisition of emergency).

“The officer so authorised may issue a requisition of emergency under his hand, reciting the said order, and requiring justices of the peace to issue their warrants for the provision, for the purpose mentioned in the requisition, of such car-

“*In Ireland.*”

For every hundredweight loaded on any wheeled vehicle.	One halfpenny.
--	----------------

“The mileage when reckoned for the purposes of payment shall include the distance from home to the place of starting, and the distance home from the place of discharge.

“riages and animals as may be provided under the foregoing provisions, and also of carriages of every description, and of horses of every description, whether kept for saddle or draught, and also of vessels (whether boats, barges, or other) used for the transport of any commodities whatsoever upon any canal or navigable river.

“A justice of the peace, on demand by an officer of the portion of Her Majesty’s forces mentioned in a requisition of emergency, or by an officer of a Secretary of State authorised in this behalf, and on production of the requisition, shall issue his warrant for the provision of such carriages, animals, and vessels as are stated by the officer producing the requisition of emergency to be required for the purpose mentioned in the requisition; the warrant shall be executed in the like manner, and all the provisions of this Act as to the provision or furnishing of carriages and animals, including those respecting fines on officers, non-commissioned officers, justices, constables, or owners of carriages or animals, shall apply in like manner as in the case where a justice issues, in pursuance of the foregoing provisions of this Act, a warrant for the provision of carriages and animals, and shall apply to vessels as if the expression carriages included vessels.

“A Secretary of State shall cause due payment to be made for carriages, animals, and vessels furnished in pursuance of this section, and any difference respecting the amount of payment for any carriage, animal, or vessel shall be determined by a County Court Judge having jurisdiction in any place in which such carriage, animal, or vessel was furnished or through which it travelled in pursuance of the requisition.

“Canal, river, or lock tolls are hereby declared not to be demandable for vessels while employed in any service in pursuance of this section or returning therefrom. And any toll collector who demands or receives toll in contravention of this exemption shall, on summary conviction, be liable to a fine not exceeding five pounds nor less than ten shillings.

“A requisition of emergency, purporting to be issued in pursuance of this section and to be signed by an officer therein stated to be authorised in accordance with this section, shall be evidence, until the contrary is proved, of its being duly issued and signed in pursuance of this Act, and if delivered to an officer of Her Majesty’s forces or of a Secretary of State shall be a sufficient authority to such officer to demand carriages, animals, and vessels in pursuance of this section, and when produced by such officer shall be conclusive evidence to a justice and constable of the authority of such officer to demand carriages, animals, and vessels in accordance with such requisition; and it shall be lawful to convey on such carriages, animals, and vessels, not only the baggage, provisions, and military stores of the troops men-

“tioned in the requisition of emergency, but also the officers, “soldiers, servants, women, children, and other persons of and “belonging to the same.”—42 & 43 Vict. c. 33, s. 112.

Effect of  
above sec-  
tion.

It is to be noticed that the above section does not confer jurisdiction upon the County Courts, but upon *the County Court Judge*. And his jurisdiction is expressly confined to those cases in which there is any dispute with respect to the *amount* of payment. In short, the duties of the County Court Judge, under “The Army Discipline and Regulation Act, 1879,” are very similar to those of an arbitrator to whom matters of account are referred, or of a jury called upon to assess damages. In no case, therefore, under the above section, will the County Court Judge have, it is submitted, to determine whether, owing to some informality, the carriages, animals, or vessels, ought never to have been taken.

It also is to be noticed that the section, above set out, provides that all the provisions of the Act as to the provision or furnishing of carriages and animals, shall apply in like manner as in the case where a justice issues, in pursuance of the foregoing provisions of the Act, a warrant for the provision of carriages and animals, and shall apply to vessels as if the expression carriages included vessels.

Practice.

The practice in the County Courts, under “The Army Discipline and Regulation Act, 1879,” will be regulated as far as possible by “The County Court Rules, 1875,” (*d*).

In what  
district the  
proceedings  
must be  
taken.

Proceedings must be commenced, it is to be noticed, either (1.) in the County Court having jurisdiction in any place in which the carriage, animal, or vessel supplied was furnished; or (2.) in the County Court having jurisdiction in any place through which it travelled, in pursuance of the requisition of emergency (*e*). For it is only the Judge of *such* a Court who



## BOOK V.—DIVISION IV.

### PROCEEDINGS UNDER STATUTES CONFERRING AN ADMINISTRATIVE JURISDICTION.

A **VERY** extensive jurisdiction of an administrative character is conferred upon the County Court by various statutes which specially name it as a tribunal to exercise jurisdiction under them. These statutes will all be considered in the present Division, and it will be convenient at the same time also to consider one other branch of the administrative jurisdiction.

The Acts commonly known as "The Trustee Relief Acts," and "The Trustee Acts," confer upon County Courts that portion of their statutory administrative jurisdiction which is the most useful and the most commonly resorted to ; and these Acts will therefore be dealt with in the first Chapter of this Division.

It may, in passing, be mentioned that "The Land Transfer Act, 1875" (38 & 39 Vict. c. 87), creates and confers upon the County Courts another *possible* head of administrative jurisdiction. For it provides (in section 114) that "the Court shall, if the rules to be made under it so direct, include the County Court. But the rules made in pursuance of the Act direct (Rule 63), that the expression "the Court" shall mean "the Supreme Court of Judicature." The County Court consequently possesses, at present, no jurisdiction whatever under "The Land Transfer Act," and the Act itself is, moreover, practically a dead letter. The following Division therefore contains no chapter on "The Land Transfer Act."

In the Second Chapter of this Division will be considered a branch of equitable jurisdiction of an administrative character, which has already been referred to in a previous page (*a*), but the detailed consideration of which has purposely been remitted to the present Division. The chapter in question will deal with the jurisdiction and proceedings in the County Court under "The Partition Acts, 1868 and 1876."

The administrative jurisdiction of the Court is however frequently resorted to with reference to the property of married women, and accordingly the jurisdiction with respect to the "Acknowledgments of Married Women," and under "The

(*a*) *Ante*, Book II. cap. i. p. 205.

Married Women's Property Act," will be considered in the Third and Fourth Chapters.

Closely allied both with the subject of the Trustee Acts and of the property of married women, is the kindred subject of application as to the maintenance and advancement of infants. The jurisdiction under this head will consequently be most conveniently considered in this portion of the Work, notwithstanding the fact that there is no special statute by which it is governed. It will accordingly form the subject of the Fifth Chapter of the present Division.

The subjects hitherto mentioned all have relation to matters and trusts of a private nature. But the statutory administrative jurisdiction is also exercised with regard to many matters of a public nature. The subject of proceedings under "The Charitable Trusts Acts" will accordingly form the Sixth Chapter of this Division. The winding up of public companies will be considered in the Seventh Chapter. Proceedings on the dissolution of literary and friendly societies will form the Eighth Chapter. The Ninth and last Chapter will be devoted to proceedings under "The Local Loans Act, 1875."

## BOOK V.—DIVISION IV.

### PROCEEDINGS UNDER STATUTES CONFERRING AN ADMINISTRATIVE JURISDICTION.

#### CHAPTER I.

##### PROCEEDINGS UNDER THE TRUSTEE RELIEF ACTS AND THE TRUSTEE ACTS.

“THE County Courts Act, 1865,” 28 & 29 Vict. c. 99, gives the County Court all the power and authority of the Court of Chancery “In all proceedings under the Trustees Relief Acts, or under the Trustee Acts, or under any of such Acts, in which the trust estate, or fund to which the proceeding relates, shall not exceed in amount or value the sum of five hundred pounds” (a). It is proposed in this Chapter to consider : (I.) The payment into Court of trust monies under the Trustee Relief Acts. (II.) Orders under the Trustee Acts as to the vesting and disposal of trust property ; and (III.) Proceedings by trustees to obtain from the Court advice and directions under the Trustee Acts.

##### SECTION I.—THE PAYMENT INTO COURT OF MONIES UNDER THE TRUSTEE RELIEF ACTS.

The jurisdiction under the Acts for the relief of trustees is best described by setting out the sections of the Acts by which such jurisdiction is conferred. Jurisdiction.

“The Trustee Relief Act, 1847,” provides as follows :—

“Whereas it is expedient to provide means for better securing trust funds, and for relieving trustees from the responsibility of administering trust funds in cases where they are desirous of being so relieved : Be it enacted, &c., That all trustees, executors, administrators, or other persons, having Trustees may pay trust monies or transfer stocks and securities into the Court

(a) Sect. 1, subsect. 5, set out in full, *ante*, pp. 200, 201.

of Chancery,  
&c.

Receipt of  
bank cashier  
or certificate  
of proper  
officer to be  
sufficient  
discharge.

*Trustee  
Relief Act,  
1847.  
Preamble,  
s. 1.*

“ in their hands any monies belonging to any trust whatsoever,  
“ or the major part of them, shall be at liberty, on filing an  
“ affidavit shortly describing the instrument creating the trust,  
“ according to the best of their knowledge and belief, to pay  
“ the same, with the privity of the Accountant-General of the  
“ High Court of Chancery, into the bank of England, to the  
“ account of such Accountant-General in the matter of the  
“ particular trust (describing the same by the names of the  
“ parties, as accurately as may be, for the purpose of distin-  
“ guishing it), in trust to attend the orders of the said Court ;  
“ and that all trustees or other persons having any annuities or  
“ stocks standing in their name in the books of the Governor  
“ and Company of the Bank of England . . . . .

“ . . . . . or any government or par-  
“ liamentary securities standing in their names, or in the names  
“ of any deceased persons of whom they shall be personal  
“ representatives, upon any trusts whatsoever, or the major  
“ part of them, shall be at liberty to transfer or deposit such  
“ stocks or securities into or in the name of the said Account-  
“ ant-General, with his privity, in the matter of the particular  
“ trust (describing the same as aforesaid), in trust to attend  
“ the orders of the said Court ; and in every such case the  
“ receipt of one of the cashiers of the said bank for the money  
“ so paid, or, in the case of stocks or securities the certificate  
“ of the proper officer, of the transfer or deposit of such stocks  
“ or securities, shall be a sufficient discharge to such trustees  
“ or other persons for the money so paid, or the stocks or  
“ securities so transferred or deposited.”—10 & 11 Vict. c. 96,  
s. 1.

Court of

Chancery to

“ And be it enacted, That such orders as shall seem fit shall  
“ be from time to time made by the High Court of Chancery

“Rolls may direct any such suit or suits to be instituted.”—10 & 11 Vict. c. 96, s. 2.

“The Trustee Relief Act, 1849,” 12 & 13 Vict. c. 74, *The Trustee Relief Act, 1849.*

amends the Act of 1847, and enacts as follows :—  
*Preamble,*  
 s. 1.

“Whereas difficulties have arisen in the transfer of securities vested in trustees in certain cases under the provisions of an Act passed in the Session of Parliament holden in the tenth and eleventh years of the reign of Her present Majesty, intituled ‘An Act for better securing trust funds, and for the relief of trustees,’ and it is expedient to make further provision for carrying into effect the objects of the said recited Act : Be it therefore enacted, &c., That if upon any petition presented to the Lord Chancellor or Master of the Rolls in the matter of the said Act it shall appear to the Judge of the Court of Chancery before whom such petition shall be heard that any monies, annuities, stocks, or securities are vested in any persons as trustees, executors, or administrators, or otherwise, upon trusts within the meaning of the said recited Act, and that the major part of such persons are desirous of transferring, paying, or delivering the same to the Accountant-General of the High Court of Chancery under the provisions of the said recited Act, but that for any reason the concurrence of the other or others of them cannot be had, it shall be lawful for such Judge as aforesaid to order and direct such transfer, payment, or delivery to be made by the major part of such persons without the concurrence of the other or others of them ; and where any such monies or Government or Parliamentary securities shall be deposited with any banker, broker, or other depository, it shall be lawful for such Judge as aforesaid to make such order for the payment or delivery of such monies, Government or Parliamentary securities, to the major part of such trustees, executors, administrators, or other persons as aforesaid, for the purpose of being paid or delivered to the said Accountant-General as to the said Judge shall seem meet ; and every transfer of any annuities, stocks, or securities, and every payment of money or delivery of securities, in pursuance of any such order, shall be as valid and effectual as if the same had been made on the authority or by the act of all the persons entitled to the annuities, stocks, or securities so transferred, or the monies or securities so paid or delivered respectively, and shall fully protect and indemnify the Governor and Company of the Bank of England . . . and all other persons acting under or in pursuance of such order.”—12 & 13 Vict. c. 74, s. 1.

“The County Courts Act, 1865,” as we already have seen (c), Above enact-

(c) By sect. 1, subsect. 5, set out in full, *ante*, pp. 200, 201.

ments applied  
to County  
Courts.

Trustees may  
pay trust  
monies or  
transfer stock  
and securities  
into the  
Court.

*The County  
Courts Act,  
1867, s. 24.*

extends the above enactments to County Courts in cases where the trust monies do not exceed £500 in amount.

"The County Courts Act, 1867," while thus applying the Act, also contains the following enactments :—

"Any monies, annuities, stocks, or securities vested in any persons as trustees, executors, administrators, or otherwise, upon trusts within the meaning of an Act passed in the session of Parliament holden in the tenth and eleventh years of the reign of her present majesty, chapter ninety-six, 'for better securing trust funds, and for the relief of trustees,' where the same does not exceed in amount or value the sum of five hundred pounds, upon the filing by such trustees or other persons, or the major part of them, to or with the registrar of the County Court within the district of which such persons or any of them shall reside, an affidavit shortly describing the instrument creating the trust according to the best of their knowledge, may in the case of money be paid into a post-office savings-bank established in the town in which the County Court is held in the name of the registrar of such Court, in trust to attend the orders of the Court, and upon such persons filing with the registrar the receipt or other document given to them by the officer of the said bank the registrar shall record the same, and give to them an acknowledgment in such form as may be directed by any rule of practice, which acknowledgment shall be a sufficient discharge to such persons for the money so paid, and in the case of stocks or securities may be transferred or deposited into or in the names of the treasurer and registrars of such Court, in trust to attend the orders of the Court, and the certificate of the proper officer of the transfer or deposit of such stocks or securities shall be a sufficient discharge to

whom any monies, stocks, or securities are vested as trustees, executors, administrators, or otherwise, upon trusts within the meaning of 10 & 11 Vict. c. 96. And this power of paying money into Court may be exercised by the *major part* of the above-named persons *(e)*. —To payment of money into Court.

The proper person to apply for payment of money out of Court is any person interested in or entitled to funds in Court, or (if need be, but not otherwise) the trustee *(f)*. —To payment of money out of Court.

"The County Courts Act, 1867," provides that trustees desiring to pay money into Court shall file their affidavit *with the registrar of the County Court within the district of which such trustees or any of them shall reside*. Trustees paying money into Court.

The practice in the County Court in proceedings under the Act is regulated by Order XXXI. of "The County Court Rules, 1875." The directions in these Rules are so plain, that it will suffice to set out the Rules themselves without further comment. Practice in proceedings under the Act.

"The County Court Rules, 1875," provide:—

"Any person desiring to pay money, transfer stock, or deposit security in trust to attend the orders of any County Court, under section 24 of 'The County Courts Act, 1867,' shall file with the registrar of the County Court having jurisdiction in the matter an affidavit, entitled in the matter of the last Act, and of the particular trust, and setting forth : Proceedings commence by filing an affidavit. Order XXXI. rule 1.

"1. His own name, address, and description :

"2. The place where he is to be served with any petition or summons, or any notice of any proceeding or order of the Court relating to the trust fund :

"3. The amount of money, stock, or security which he proposes to pay, transfer, or deposit in trust to attend the orders of the Court :

"4. A short description of the trust or of the instrument creating it :

"5. The names, addresses, and descriptions of the persons interested in or entitled to, or claiming to be interested in or entitled to the fund, to the best of the knowledge and belief of the trustee :

"6. The submission of the trustee to answer all such inquiries relating to the application of the money or stock paid in or transferred, or security deposited, as the Court may think proper to make or direct."—Order XXXI. r. 1.

"The affidavit may be according to the form in the Schedule *(g)*, with such variations as each particular case may require."—Order XXXI. r. 2. Form of affidavit. *Id.*, rule 2.

*(e)* Sect. 24.

*(f)* See Ord. xxxi. r. 12, *post*, p. 1047.

*(g)* Appendix II. Form No. 226. "The County Court Rules, 1875," provide that affidavits under the Act to which Ord. xxxi. relates shall be entitled with the Act referred to in this Order and Rules. See Schedule.

Memorandum  
of filing to be  
indorsed.

*Order  
XXXI.  
rule 3.*

Certificate of;  
filing may be  
given.

*Id., rule 4.*

Money may  
be paid into  
post office  
savings bank.

*Id., rule 5.*

Transfer of  
stock.

*Id., rule 6.*

“Immediately on the receipt by the registrar of the affidavit, he shall indorse thereon a memorandum of the day on which the same was filed, and when such affidavit shall be so indorsed it shall be taken for all purposes to have been duly filed on the date so indorsed thereon.”—Order XXXI. r. 3.

“The persons filing the affidavit, or any of them, may apply to the registrar to give to them a certificate entitled in the matter of ‘The County Courts Act, 1867,’ and of the particular trust, and under the seal of the Court, certifying that the affidavit has been filed, and such certificate may be according to the form in the Schedule (*h*), with such variation as each particular case may require.”—Order XXXI. r. 4.

“In the case of money, the persons filing the affidavit, or any of them, may, upon the receipt of the before-mentioned certificate, pay the money into a post-office savings-bank, under section 24 of ‘The County Courts Act, 1867,’ and obtain from the officer of the bank a receipt for the same, and shall forthwith leave the said receipt with the registrar, and the registrar shall accordingly indorse thereupon a memorandum of the day on which the same was received by him, and when such receipt shall be so indorsed it shall be taken for all purposes to have been duly recorded on the date so indorsed thereon.”—Order XXXI. r. 5.

“In the case of stocks, the persons filing the affidavit, or any of them, may, upon the receipt of the before-mentioned certificate, transfer the stocks into the names of the treasurer and registrar of the County Court mentioned in the said certificate, in trust to attend the orders of the Court, and shall forthwith leave the transfer ticket with the registrar, and the registrar shall immediately indorse thereon a memo-



"Where there is a County Court in which there is not a Form.  
 "treasurer, the transfer or deposit shall be made in the name Order  
 "of the registrar and of the superintendent of the County XXXI.  
 "Court department of the Treasury for the time being."— rule 9.  
 Order XXXI. r. 9.

"Immediately after the recording of the receipt or transfer Transfer or  
 "ticket, or the deposit of the security, the registrar shall give deposit where  
 "to the person paying in the said money, or transferring the no treasurer.  
 "said stocks or depositing the security, an acknowledgment or Id., rule 10.  
 "certificate of such payment or transfer or deposit, and such  
 "acknowledgment or certificate may be according to the form  
 "in the Schedule (k), with such variations as each particular  
 "case may require."—Order XXXI. r. 10.

"Immediately after the recording of the receipt or transfer Certificate of  
 "ticket, or giving a certificate of deposit of security, the regis- payment,  
 "trar shall cause an entry to be made in the book heretofore transfer, or  
 "called the Suits and Proceedings in Equity Book of the title deposit to be  
 "of the particular trust, and the amount of money or stock paid given.  
 "or transferred, or security deposited, and the names and Id., rule 11.  
 "addresses of the person or persons making such payment,  
 "transfer, or deposit, and the names of every person stated in  
 "the affidavit to be or to claim to be interested in or entitled  
 "to such money or stock, and their addresses and descriptions,  
 "as given in the affidavit; and the registrar shall forthwith,  
 "by post, send to each of such last-mentioned persons, to the  
 "addresses given in the affidavit, a notice of the said payment,  
 "transfer, or deposit, which notice shall be under the seal of  
 "the Court, and may be according to the form in the  
 "Schedule (l), with such variations as each particular case may  
 "require."—Order XXXI. r. 11.

"Any person interested in or entitled to funds in Court, or Payment out  
 "(if need be, but not otherwise) the trustee, who desires the of Court to  
 "directions of the Court as to the investment, paying out, or be obtained  
 "distribution of the fund or income thereof, may file a peti- by petition  
 "tion (m) setting forth shortly the particular trust in which he by person  
 "applies, and the substance of the order he seeks to obtain, interested  
 "and if the nature of the case require it, he shall give full par- in funds in  
 "ticulars of his claim, and of the relief or remedy to which he Court.  
 "claims to be entitled. The Court, in adjusting the costs of Id., rule 12.  
 "the action, shall inquire at the instance of any party into any  
 "prolixity, and shall order the costs occasioned by such pro-  
 "lixity to be borne by the party chargeable with the same."—  
 Order XXXI. r. 12.

"Where the application shall relate to the capital of the Order for  
 "fund in Court, the trustee and all persons interested in such service of

(k) Appendix II. Forms Nos. 229, 230, and 231.

(l) Appendix II. Form No. 232.

(m) Appendix II. Form No. 227.

notice of  
application  
on trustee.

Order  
XXXI.  
rule 13.

Costs.

*Id.*, rule 14.

“ fund must be served with the petition, unless the Court shall otherwise direct ; and where the application relates to the income only of the trust fund, the trustee only shall be served with the petition, unless the Court shall otherwise direct.”—Order XXXI. r. 13.

“ The County Court Rules, 1875,” provide that :—

“ Where a trustee shall have availed himself of the provisions of section 24 of ‘ The County Courts Act, 1867,’ without sufficient reason, the Judge may direct such trustee to bear his own costs, and pay the costs of any other parties, or to bear and pay any part of such respective costs, as the Judge shall think fit.”—Order XXXI. r. 14.

This rule is in accordance with the cases of *In re Folignano's Mortgage (n)*, and *Re Woodburn's Will (o)*, which decide that a trustee who has improperly paid money into Court is liable to pay the costs of application for payment out of Court of fund paid in by him.

## SECTION II.—ORDERS UNDER “ THE TRUSTEE ACTS,” AS TO THE VESTING AND DISPOSAL OF TRUST PROPERTY.

County Courts  
possess jurisdic-  
tion under  
the Trustee  
Acts.

The jurisdiction of the Chancery Division of the High Court under “ The Trustee Acts, 1850 and 1852,” may, as already pointed out (*p*), be exercised by the County Courts where the estate or fund to which the proceeding relates shall not exceed in amount or value the sum of £500.

“ The Trustee  
Acts, 1850  
and 1852.”

The Acts known as “ The Trustee Acts,” are two Acts of Parliament ; one of which—13 & 14 Vict. c. 60, s. 58—was passed in the year 1850 ; and the other of which—15 & 16 Vict. c. 55—was passed in the year 1852.

“The Trustee Act, 1850,” contains the following interpretation clause :—

Interpretation  
clause.

“And whereas it is expedient to define the meaning in which certain words are hereafter used : It is declared that the several words hereinafter named are herein used and applied in the manner following respectively ; (that is to say,)

*The Trustee  
Act, 1850,  
s. 2.*

“The word ‘Lands’ shall extend to and include manors, messuages, tenements, and hereditaments, corporeal and incorporeal, of every tenure or description, whatever may be the estate or interest therein :

“The word ‘Stock’ shall mean any fund, annuity, or security transferable in books kept by any company or society established or to be established, or transferable by deed alone, or by deed accompanied by other formalities, and any share or interest therein :

“The word ‘Seised’ shall be applicable to any vested estate for life or of a greater description, and shall extend to estates at law and in equity, in possession or in futurity, in any lands :

“The word ‘Possessed’ shall be applicable to any vested estate less than a life estate, at law or in equity, in possession or in expectancy, in any lands :

“The words ‘Contingent Right,’ as applied to lands, shall mean a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility be or be not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent :

“The words ‘Convey’ and ‘Conveyance,’ applied to any person, shall mean the execution by such person of every necessary or suitable assurance for conveying or disposing to another lands whereof such person is seised or entitled to a contingent right, either for the whole estate of the person conveying or disposing, or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance, including the acts to be performed by married women and tenants in tail in accordance with the provisions of an Act passed in the fourth year of the reign of his late Majesty King William the Fourth, intituled ‘An Act for the Abolition of Fines and Recoveries, and the Substitution of more simple Modes of Assurance,’ and including also surrenders and other acts which a tenant of customary or copyhold lands can himself perform preparatory to or in aid of a complete assurance of such customary or copyhold lands :

- “ The words ‘ Assign ’ and ‘ Assignment ’ shall mean the  
“ execution and performance by a person of every  
“ necessary or suitable deed or act for assigning,  
“ surrendering, or otherwise transferring lands of  
“ which such person is possessed, either for the  
“ whole estate of the person so possessed or for any  
“ less estate :
- “ The word ‘ Transfer ’ shall mean the execution and per-  
“ formance of every deed and act by which a person  
“ entitled to stock can transfer such stock from him-  
“ self to another :
- “ The words ‘ Lord Chancellor ’ shall mean as well the  
“ Lord Chancellor of Great Britain as any Lord  
“ Keeper or Lords Commissioners of the Great Seal  
“ for the time being :
- “ The words ‘ Lord Chancellor of Ireland ’ shall mean as  
“ well the Lord Chancellor of Ireland as any Keeper  
“ or Lords Commissioners of the Great Seal of  
“ Ireland for the time being :
- “ The word ‘ Trust ’ shall not mean the duties incident to  
“ an estate conveying by way of mortgage ; but, with  
“ this exception, the words ‘ Trust ’ and ‘ Trustee ’  
“ shall extend to and include implied and construc-  
“ tive trusts, and shall extend to and include cases  
“ where the trustee has some beneficial estate or  
“ interest in the subject of the trust, and shall extend  
“ to and include the duties incident to the office of  
“ personal representative of a deceased person :
- “ The word ‘ Lunatic ’ shall mean any person who shall  
“ have been found to be a lunatic upon a commission  
“ of inquiry in the nature of a writ de lunatico

“ And generally, unless the contrary shall appear from the  
 “ context, every word importing the singular number  
 “ only shall extend to several persons or things, and  
 “ every word importing the plural number shall apply  
 “ to one person or thing, and every word importing  
 “ the masculine gender only shall extend to a female.”  
 —13 & 14 Vict. c. 60, s. 2.

It will be most convenient now to set out the text of those sections of “ The Trustee Acts ” which are of general application. These are as follows :—

“ No lands, stock, or chose in action vested in any person  
 “ upon any trust or by way of mortgage, or any profits thereof,  
 “ shall escheat or be forfeited to Her Majesty, her heirs or  
 “ successors, or to any corporation, lord or lady of a manor, or  
 “ other person, by reason of the attainder or conviction for any  
 “ offence of such trustee or mortgagee, but shall remain in such  
 “ trustee or mortgagee, or survive to his or her co-trustee, or  
 “ descend or vest in his or her representative, as if no such  
 “ attainder or conviction had taken place.”—13 & 14 Vict.  
 c. 60, s. 46.

“ Nothing contained in this Act shall prevent the escheat or  
 “ forfeiture of any lands or personal estate vested in any such  
 “ trustee or mortgagee, so far as relates to any beneficial interest  
 “ therein of any such trustee or mortgagee, but such lands or  
 “ personal estate, so far as relates to any such beneficial interest,  
 “ shall be recoverable in the same manner as if this Act had  
 “ not passed.”—13 & 14 Vict. c. 60, s. 47.

“ The Trustee Acts, 1850 and 1852,” confer upon the Court  
 very extensive powers to appoint new trustees and to make  
 orders for the vesting of property. The cases in which such  
 powers exist can be ascertained from the following sections of  
 these Acts :—

“ When any person is or shall be jointly or solely seised or  
 “ possessed of any lands or entitled to any stock upon any  
 “ trust, and such person has been or shall be convicted of  
 “ felony, it shall be lawful for the Court of Chancery, upon  
 “ proof of such conviction, to appoint any person to be a trustee  
 “ in the place of such convict, and to make an order for  
 “ vesting such lands, or the right to transfer such stock, and to  
 “ receive the dividends or income thereof, in such person to be  
 “ so appointed trustee ; and such order shall have the same  
 “ effect as to lands as if the convict trustee had been free from  
 “ any disability, and had duly executed a conveyance or as-  
 “ signment of his estate and interest in the same.”—15 & 16  
 Vict. c. 55, s. 8.

“ Where any infant shall be seised or possessed of any lands  
 “ upon any trust or by way of mortgage, it shall be lawful for  
 “ the Court of Chancery to make an order vesting such lands  
 “ in such person or persons in such manner and for such estate

General provisions of  
 “ The Trustee  
 Acts.”

No escheat  
 of property  
 held upon  
 trust or  
 mortgage.

*The Trustee  
 Act, 1850,*  
 s. 46.

Act not to  
 prevent  
 escheat or  
 forfeiture of  
 beneficial  
 interest.

*Id., s. 47.*

Powers conferred by  
 “ The Trustee  
 Acts ” to ap-  
 point new  
 trustees or to  
 make orders  
 vesting.

—Where a  
 trustee is  
 convicted  
 of felony.

*The Trustee  
 Act, 1852,*  
 s. 8.

—Where an  
 infant is  
 trustee and  
 mortgagee.

*The Trustee Act, 1850,*  
s. 7.

—Or where  
an infant  
mortgagee  
or trustee is  
entitled to  
contingent  
rights.

*Id.*, s. 8.

—Or where  
stock stands  
in the name  
of an infant  
trustee.

*The Trustee Act, 1852,*  
s. 3.

—Or where  
a sole trustee  
of land is out  
of the juris-  
diction of the  
Court, or

“ as the said Court shall direct ; and the order shall have the  
“ same effect as if the infant trustee or mortgagee had been  
“ twenty-one years of age, and had duly executed a conveyance  
“ or assignment of the lands in the same manner for the same  
“ estate.”—13 & 14 Vict. c. 60, s. 7.

“ Where any infant shall be entitled to any contingent right  
“ in any lands upon any trust or by way of mortgage, it shall  
“ be lawful for the Court of Chancery to make an order wholly  
“ releasing such lands from such contingent right, or disposing  
“ of the same to such person or persons as the said Court shall  
“ direct ; and the order shall have the same effect as if the  
“ infant had been twenty-one years of age, and had duly exe-  
“ cuted a deed so releasing or disposing of the contingent  
“ right.”—13 & 14 Vict. c. 60, s. 8.

“ When any infant shall be solely entitled to any stock upon  
“ any trust, it shall be lawful for the Court of Chancery to  
“ make an order vesting in any person or persons the right to  
“ transfer such stock, or to receive the dividends or income  
“ thereof ; and when any infant shall be entitled jointly with  
“ any other person or persons to any stock upon any trust, it  
“ shall be lawful for the said Court to make an order vesting  
“ the right to transfer such stock, or to receive the dividends  
“ or income thereof, either in the person or persons jointly  
“ entitled with the infant, or in him or them together with any  
“ other person or persons the said Court may appoint.”—15 &  
16 Vict. c. 55, s. 3.

“ When any person solely seised or possessed of any lands  
“ upon any trust shall be out of the jurisdiction of the Court  
“ of Chancery, or cannot be found, it shall be lawful for the  
“ said Court to make an order vesting such lands in such per-  
“ son or persons in such manner and for such estate as the said

“ the Court of Chancery, or cannot be found, it shall be lawful  
 “ for the said Court to make an order wholly releasing such  
 “ lands from such contingent right, or disposing of the same to  
 “ such person or persons as the said Court shall direct ; and the  
 “ order shall have the same effect as if the trustee had duly  
 “ executed a conveyance so releasing or disposing of the con-  
 “ tingent right.”—13 & 14 Vict. c. 60, s. 11.

contingent  
 rights is so.  
*The Trustee  
 Act, 1850,*  
*s. 11.*

“ When any person jointly entitled with any other person or  
 “ persons to a contingent right in any lands upon any trust  
 “ shall be out of the jurisdiction of the Court of Chancery, or  
 “ cannot be found, it shall be lawful for the said Court to make  
 “ an order disposing of the contingent right of the person out  
 “ of the jurisdiction, or who cannot be found, to the person or  
 “ persons so jointly entitled as aforesaid, or to such last-men-  
 “ tioned person or persons together with any other person or  
 “ persons ; and the order shall have the same effect as if the  
 “ trustee out of the jurisdiction, or who cannot be found, had  
 “ duly executed a conveyance so releasing or disposing of the  
 “ contingent right.”—13 & 14 Vict. c. 60, s. 12.

—Or where a  
 joint trustee  
 of contingent  
 rights in lands  
 is so.

*Id.*, s. 12.

“ When any person or persons shall be jointly entitled with  
 “ any person out of the jurisdiction of the Court of Chancery,  
 “ or who cannot be found, or concerning whom it shall be un-  
 “ certain whether he be living or dead, to any stock or chose  
 “ in action upon any trust, it shall be lawful for the said Court  
 “ to make an order vesting the right to transfer such stock, or  
 “ to receive the dividends or income thereof, or to sue for or  
 “ recover such chose in action, or any interest in respect thereof,  
 “ either in such person or persons so jointly entitled as afore-  
 “ said, or in such last-mentioned person or persons together  
 “ with any person or persons the said Court may appoint ; and  
 “ when any sole trustee of any stock or chose in action shall  
 “ be out of the jurisdiction of the said Court, or cannot  
 “ be found, or it shall be uncertain whether he be living or  
 “ dead, it shall be lawful for the said Court to make an order  
 “ vesting the right to transfer such stock, or to receive the  
 “ dividends or income thereof, or to sue for and recover such  
 “ chose in action, or any interest in respect thereof, in any  
 “ person or persons the said Court may appoint.”—13 & 14  
 Vict. c. 60, s. 22.

—Or where  
 one of several  
 trustees of  
 stock is out  
 of the juris-  
 diction.

*Id.*, s. 22.

“ When any stock shall be standing in the sole name of a  
 “ deceased person, and his or her personal representative shall  
 “ be out of the jurisdiction of the Court of Chancery or can-  
 “ not be found, or it shall be uncertain whether such personal  
 “ representative be living or dead, or such personal representa-  
 “ tive shall neglect or refuse to transfer such stock, or receive  
 “ the dividends or income thereof, according to the direction of  
 “ the person absolutely entitled thereto, for the space of twenty-  
 “ eight days next after a request in writing for that purpose  
 “ shall have been made to him by the person entitled as afore-

—Or where  
 stock is stand-  
 ing in the  
 name of a  
 deceased  
 person whose  
 representa-  
 tives are  
 unknown.

*Id.*, s. 25.

“said, it shall be lawful for the Court of Chancery to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, in any person or persons whom the said Court may appoint.”—13 & 14 Vict. c. 60, s. 25.

—Or they refuse to deal with the stock.

*The Trustee Act, 1852, s. 5.*

“When any stock shall be standing in the sole name of a deceased person, and his personal representative shall refuse or neglect to transfer such stock or receive the dividends or income thereof for the space of twenty-eight days next after an order of the Court of Chancery for that purpose shall have been served upon him, it shall be lawful for the Court of Chancery to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, in any person or persons whom the said Court may appoint.”—15 & 16 Vict. c. 55, s. 5.

—Or where it is uncertain which of several trustees of land was the survivor.

*Id.*, s. 13.

“Where there shall have been two or more persons jointly seised or possessed of any lands upon any trust, and it shall be uncertain which of such trustees was the survivor, it shall be lawful for the Court of Chancery to make an order vesting such lands in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the survivor of such trustees had duly executed a conveyance or assignment of the lands in the same manner for the same estate.”—13 & 14 Vict. c. 60, s. 13.

—Or where it is uncertain whether the last trustee of land is living or dead.

“Where any one or more person or persons shall have been seised or possessed of any lands upon any trust, and it shall not be known, as to the trustee last known to have been seised or possessed, whether he be living or dead, it shall be lawful for the Court of Chancery to make an order vesting such lands in such person or persons in such manner and for



“ the Court of Chancery to make an order which shall wholly release and discharge such lands from such contingent right in such unborn person or class of unborn persons, or to make an order which shall vest in any person or persons the estate or estates which such unborn person or class of unborn persons would upon coming into existence be seised or possessed of in such lands.”—13 & 14 Vict. c. 60, s. 16.

to contingent rights.

*The Trustee Act, 1852,*  
s. 16.

“ In every case where any person is or shall be jointly or solely seised or possessed of any lands or entitled to a contingent right therein upon any trust, and a demand shall have been made upon such trustee by a person entitled to require a conveyance or assignment of such lands, or a duly authorised agent of such last-mentioned person, requiring such trustee to convey or assign the same, or to release such contingent right, it shall be lawful for the Court of Chancery, if the said Court shall be satisfied that such trustee has wilfully refused or neglected to convey or assign the said lands for the space of twenty-eight days after such demand, to make an order vesting such lands in such person, in such manner and for such estate as the Court shall direct, or releasing such contingent right in such manner as the Court shall direct; and the said order shall have the same effect as if the trustee had duly executed a conveyance or assignment of the lands, or a release of such right, in the same manner and for the same estate.”—15 & 16 Vict. c. 55, s. 2.

—Or where trustee refuses or neglects to convey or release.

*Id.*, s. 2.

“ Where any sole trustee of any stock or chose in action shall neglect or refuse to transfer such stock, or to receive the dividends or income thereof, or to sue for or recover such chose in action, or any interest in respect thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person absolutely entitled thereto, it shall be lawful for the Court of Chancery to make an order vesting the sole right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, or any interest in respect thereof, in such person or persons as the said Court may appoint.”—13 & 14 Vict. c. 60, s. 23.

—Or where a trustee of stock refuses to transfer.

*The Trustee Act, 1850,*  
s. 23.

“ Where any one of the trustees of any stock or chose in action shall neglect or refuse to transfer such stock, or to receive the dividends or income thereof, or to sue for or recover such chose in action according to the directions of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him or her by such person, it shall be lawful for the Court of Chancery to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, in the other trustee or trustees of the said stock or

—Or where one of several trustees of stock refuses to transfer or receive and pay over dividends.

*The Trustee Act, 1850,*  
s. 24.

or where  
any person  
refuses or  
neglects to  
deal with  
stock as  
directed by  
the Court.  
*The Trustee*  
*Act, 1864,*  
*s. 4.*

or in cer-  
tain cases on  
the death of  
a mortgagee  
not in pos-  
session.  
*Id., s. 10.*

“ chose in action, or in any person or persons whom the said  
“ Court may appoint jointly with such other trustee or  
“ trustees.” 13 & 14 Vict. c. 60, s. 24.

“ Where any person shall neglect or refuse to transfer any  
“ stock, or to receive the dividends or income thereof, or to  
“ sue for or recover any chose in action, or any interest in  
“ respect thereof, for the space of twenty-eight days next after  
“ an order of the Court of Chancery for that purpose shall have  
“ been served upon him, it shall be lawful for the Court of  
“ Chancery to make an order vesting all the right of such  
“ person to transfer such stock, or to receive the dividends or  
“ income thereof, or to sue for and recover such chose in  
“ action, or any interest in respect thereof, in such person or  
“ persons as the said Court may appoint.”—15 & 16 Vict.  
c. 55, s. 4.

“ And be it enacted, That (g) when any person to whom any  
“ lands have been conveyed by way of mortgage shall have  
“ died without having entered into the possession or into the  
“ receipt of the rents and profits thereof, and the money due  
“ in respect of such mortgage shall have been paid to a person  
“ entitled to receive the same, or such last-mentioned person  
“ shall consent to an order for the reconveyance of such lands,  
“ then in any of the following cases it shall be lawful for the  
“ Court of Chancery to make an order vesting such lands in  
“ such person or persons in such manner and for such estate as  
“ the said Court shall direct ; that is to say,

“ When an heir or devisee of such mortgagee shall be out  
“ of the jurisdiction of the Court of Chancery, or  
“ cannot be found :

“ When an heir or devisee of such mortgagee shall, upon  
“ a demand by a person entitled to require a convey-

“and it shall not be known who is his heir or devisee :

“And the order of the said Court of Chancery made in any one of the foregoing cases shall have the same effect as if the heir or devisee or surviving devisee, as the case may be, had duly executed a conveyance or assignment of the lands in the same manner and for the same estate.”—13 & 14 Vict. c. 60, s. 19.

“And be it enacted, that when a decree shall have been made by any Court of Equity directing the sale of any lands for the payment of the debts of a deceased person, every person seised or possessed of such lands, or entitled to a contingent right therein, as heir, or under the will of such deceased debtor, shall be deemed to be so seised or possessed or entitled, as the case may be, upon a trust within the meaning of this Act ; and the Court of Chancery is hereby empowered to make an order wholly discharging the contingent right, under the will of such deceased debtor, of any unborn person.”—13 & 14 Vict. c. 60, s. 29.

—Or where the Court has directed a sale of real estate for the payment of debts.

*The Trustee Act, 1850,*  
s. 29.

“Where any decree shall be made by any Court of Equity for the specific performance of a contract concerning any lands, or for the partition or exchange of any lands, or generally when any decree shall be made for the conveyance or assignment of any lands, either in cases arising out of the doctrine of election or otherwise, it shall be lawful for the said Court to declare that any of the parties to the said suit wherein such decree is made are trustees of such lands or any part thereof, within the meaning of this Act, or to declare concerning the interests of unborn persons who might claim under any party to the said suit, or under the will or voluntary settlement of any person deceased who was during his lifetime a party to the contract or transactions concerning which such decree is made, that such interests of unborn persons are the interests of persons who upon coming into existence would be trustees within the meaning of this Act, and thereupon it shall be lawful for the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, as the case may be, to make such order or orders as to the estates, rights, and interests of such persons, born or unborn, as the said Court or the said Lord Chancellor might under the provisions of this Act make concerning the estates, rights, and interests of trustees born or unborn.”—13 & 14 Vict. c. 60, s. 30.

—Or where a decree has been made as to land for specific performance of contract of sale—for partition, exchange, or conveyance.

*Id., s. 30.*

“When any decree or order shall have been made by any Court of Equity, directing the sale of any lands for any purpose whatever, every person seised or possessed of such land, or entitled to a contingent right therein, being a party to the suit or proceeding in which such decree or order shall have been made, and bound thereby, or being otherwise bound by

*The Trustee Act, 1852,*  
s. 1.

“such decree or order, shall be deemed to be so seised or possessed or entitled (as the case may be) upon a trust within the meaning of ‘The Trustee Act, 1850 ;’ and in every such case it shall be lawful for the Court of Chancery, if the said Court shall think it expedient for the purpose of carrying such sale into effect, to make an order vesting such lands or any part thereof, for such estate as the Court shall think fit, either in any purchaser or in such other person as the Court shall direct ; and every such order shall have the same effect as if such person so seised or possessed or entitled had been free from all disability, and had duly executed all proper conveyances and assignments of such lands for such estate.”  
—15 & 16 Vict. c. 55, s. 1.

—Or where-  
ever a new  
trustee cannot  
be appointed  
without the  
aid of the  
Court.

*The Trustee  
Act, 1852,  
s. 9.*

*The Trustee  
Act, 1850,  
s. 32.*

“In all cases where it shall be expedient to appoint a new trustee, and it shall be found inexpedient, difficult, or impracticable so to do without the assistance of the Court of Chancery, it shall be lawful for the said Court to make an order appointing a new trustee or new trustees, whether there be any existing trustee or not at the time of making such order.”—15 & 16 Vict. c. 55, s. 9.

“And be it enacted, that whenever it shall be expedient to appoint a new trustee or new trustees, and it shall be found inexpedient, difficult, or impracticable so to do without the assistance of the Court of Chancery, it shall be lawful for the said Court of Chancery to make an order appointing a new trustee or new trustees, either in substitution for or in addition to any existing trustee or trustees”(r).—13 & 14 Vict. c. 60, s. 32.

The new  
trustees so  
appointed  
to have the

“The person or persons who, upon the making of such order as last aforesaid, shall be trustee or trustees, shall have all the same rights and powers as he or they would have had if ap-

"making any order for appointing a new trustee or new trustees, either by the same or by any subsequent order, to vest the right to call for a transfer of any stock subject to the trust, or to receive the dividends or income thereof, or to sue for or recover any chose in action, subject to the trust, or any interest in respect thereof, in the person or persons who upon the appointment shall be the trustee or trustees."—13 & 14 Vict. c. 60, s. 35.

Court to vest right to sue at law in new trustees.

*The Trustee Act, 1850, s. 35.*

"Any such appointment by the Court of new trustees, and any such conveyance, assignment, or transfer as aforesaid, shall operate no further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have done."—13 & 14 Vict. c. 60, s. 36.

Old trustees not to be discharged from liability.

*Id.*, s. 36.

The provisions of the Trustee Acts with regard to the making of vesting orders are not confined to private trusts, but also extend to charities. This is provided by the following enactment:—

Powers under Acts as to making vesting orders extend to charities.

*Id.*, s. 45.

"And be it enacted, that it shall be lawful for the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, to exercise the powers herein conferred for the purpose of vesting any lands, stock, or chose in action in the trustee or trustees of any charity or society over which charity or society the said Court of Chancery would have jurisdiction upon suit duly instituted, whether such trustee or trustees shall have been duly appointed by any power contained in any deed or instrument, or by the decree of the said Court of Chancery, or by order made upon a petition to the said Court under any statute authorising the said Court to make an order to that effect in a summary way upon petition."—13 & 14 Vict. c. 60, s. 45.

"And be it enacted, that the powers and authorities given by this Act to the Court of Chancery in England shall extend to all lands and personal estate within the dominions, plantations and colonies belonging to Her Majesty (except Scotland)."—13 & 14 Vict. c. 60, s. 54.

Powers of Court to extend to property out of the jurisdiction.

*Id.*, s. 54.

As regards lands in all cases in which a vesting order might be made under the Act, instead of such a vesting order, some person may be directed to execute a conveyance. Power to do this is given by the following enactment:—

As regards lands, instead of a vesting order, some person may be appointed to convey.

"In every case where the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, shall, under the provisions of this Act, be enabled to make an order having the effect of a conveyance or assignment of any lands, or having the effect of a release or disposition of the contingent right of any person or persons, born or unborn, it shall also be lawful for the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, as the case may be, should it be deemed more convenient, to make an order appointing a person to

*The Trustee  
Act, 1850,  
s. 20.*

“ convey or assign such lands, or release or dispose of such  
“ contingent right ; and the conveyance or assignment, or  
“ release or disposition, of the person so appointed, shall, when  
“ in conformity with the terms of the order by which he is  
“ appointed, have the same effect, in conveying or assigning  
“ the lands, or releasing or disposing of the contingent right, as  
“ an order of the Lord Chancellor, intrusted as aforesaid, or  
“ the Court of Chancery, would in the particular case have had  
“ under the provisions of this Act ; and in every case where  
“ the Lord Chancellor, intrusted as aforesaid, or the Court of  
“ Chancery, shall, under the provisions of this Act, be enabled  
“ to make an order vesting in any person or persons the right  
“ to transfer any stock transferable in the books of the go-  
“ vernor and company of the Bank of England, or of any other  
“ company or society established or to be established, it shall  
“ also be lawful for the Lord Chancellor, intrusted as aforesaid,  
“ or the Court of Chancery, if it be deemed more convenient,  
“ to make an order directing the secretary, deputy secretary,  
“ or accountant-general for the time being of the governor  
“ and company of the Bank of England, or any officer of such  
“ other company or society, at once to transfer or join in trans-  
“ ferring the stock to the person or persons to be named in the  
“ order ; and this Act shall be a full and complete indemnity  
“ and discharge to the governor and company of the Bank of  
“ England, and all other companies or societies and their  
“ officers and servants, for all acts done or permitted to be done  
“ pursuant thereto.”—13 & 14 Vict. c. 60, s. 20.

As regards  
stock, any  
person may  
be ordered  
by Court to

As regards stock there is, in addition to the extensive powers of making vesting orders, already set out, also power to make an order directing the persons in whom it is vested to deal with it in any mode the Court may direct. Such power is

“ application of any person duly appointed as a trustee thereof;  
 “ and that an order under any of the provisions hereinbefore  
 “ contained concerning any lands, stock, or chose in action  
 “ subject to a mortgage may be made on the application of any  
 “ person beneficially interested.”—13 & 14 Vict. c. 60, s. 37.

“ The County Courts Act, 1865,” (28 & 29 Vict. c. 99),  
 enacts that “ Proceedings under ‘ The Trustee Acts, 1850 and  
 “ 1852,’ shall be taken in the County Court within the district  
 “ of which the persons making the application in any of them  
 “ reside or resides ” (s).

In what district County Court proceedings to be commenced.

It remains (having set out the jurisdiction under these Acts,) to consider the practice in cases under “ The Trustee Acts.”

Practice in cases under the Act.

Proceedings under the Acts are in all cases commenced by petition, under the provisions following :—

—Proceedings commenced by petition.

“ Any person or persons entitled in manner aforesaid to apply  
 “ for an order from the said Court of Chancery, or from the  
 “ Lord Chancellor, intrusted as aforesaid, may, should he so  
 “ think fit, present a petition in the first instance to the Court  
 “ of Chancery, or to the Lord Chancellor, intrusted as afore-  
 “ said, for such order as he may deem himself entitled to, and  
 “ may give evidence by affidavit or otherwise in support of  
 “ such petition before the said Court, or the Lord Chancellor,  
 “ intrusted as aforesaid, and may serve such person or persons  
 “ with notice of such petition as he may deem entitled to  
 “ service thereof.”—13 & 14 Vict. c. 60, s. 40.

*The Trustee Act, 1850, s. 40.*

“ Subject to, and in accordance with the foregoing rules (t)  
 “ all proceedings under the fifth and sixth clauses of the first  
 “ section of ‘ The County Courts Act, 1865,’ shall be com-  
 “ menced by filing a petition.”—Order XXXI. r. 15.

*County Court Rules, 1875.*

*Order XXXI. rule 15.*

The form of a petition under “ The Trustee Acts ” will be found in the Appendix of Forms (u).

—Form of petition.

The mode of preparing and presenting the petition, and the general details of the procedure will, together with the rules by which it is governed, be found in the Introductory Chapter of the present Book, to which reference must be made. The County Court Rules contain an order specially making the rules there set out applicable to proceedings under “ The Trustee Act.” Such order is as follows :—

—And proceedings generally the same as on other petitions.

“ Such of these rules as relate (tt) to proceedings which prior

Rules to

(s) Sect. 10, subsect. 2. See *ante*, p. 277.

(t) The foregoing Rules of this Order relate generally to the payment of money into Court under the Trustee Relief Act, and they have already been set out in full in the preceding section of the present chapter. See *ante*, p. 1045, *et seq.*

(u) Appendix II. Form 302.

(tt) The Rule originally commenced “ The preceding Rules relating ” &c. ; but “ The County Court Rules, 1876,” provide :—

“ In Order XXXI. r. 21, for the words ‘ The preceding Rules relating ’ the words ‘ Such of these Rules as relate,’ are hereby substituted.”—Order XXXI. r. 21 a.

*Order XXXI. rule 21a.*

extend to proceedings under this order.

—Evidence for hearing must be prepared in form of affidavits.

Proceedings at the hearing.

Inquiry may be directed.

*The Trustee Act, 1850, s. 41.*

—Or an action to ascertain the rights of the parties may be ordered.

*The Trustee Act, 1850, s. 53.*

“to the 1st of November, 1875, would have been commenced by a plaint in equity shall, in all cases where they are applicable, be construed as extending to proceedings under this order.”—Order XXXI. r. 21.

The evidence for the hearing must be prepared in the form of an affidavit. This is required by one of “The County Court Rules, 1875,” which has been already set out in the Introductory Chapter of this Book (y).

It is necessary here to consider the steps which “The Trustee Acts” provide may be taken at the hearing of a case under them. Such steps are as follows :—

“Upon the hearing of any such petition it shall be lawful for the said Court or for the said Lord Chancellor, should it be deemed necessary, to direct a reference to one of the masters in ordinary of the Court of Chancery (z) to inquire into any facts which require such an investigation, or it shall be lawful for the said Court or for the said Lord Chancellor to direct such petition to stand over, to enable the petitioner or petitioners to adduce evidence or further evidence before the said Court or before the said Lord Chancellor, or to enable notice or any further notice of such petition to be served upon any person or persons.”—13 & 14 Vict. c. 60, s. 41.

“Upon any petition under this Act being presented to the Lord Chancellor, intrusted as aforesaid, or to the Court of Chancery, it shall be lawful for the said Lord Chancellor or the said Court of Chancery to postpone making any order upon such petition, until the right of the petitioner or petitioners shall have been declared in a suit duly instituted for that purpose.”—13 & 14 Vict. c. 60, s. 53.

“Upon the hearing of any such petition, whether any cer-



“any petition or motion in the said cause or matter, to make such order under this Act.”—13 & 14 Vict. c. 60, s. 43.

“Whenever any order shall be made under this Act, either by the Lord Chancellor, intrusted as aforesaid, or by the Court of Chancery, for the purpose of conveying or assigning any lands, or for the purpose of releasing or disposing of any contingent right, and such order shall be founded on an allegation of the personal incapacity of a trustee or mortgagee, or on an allegation that a trustee or the heir or devisee of a mortgagee is out of the jurisdiction of the Court of Chancery, or cannot be found, or that it is uncertain which of several trustees, or which of several devisees of a mortgagee, was the survivor, or whether the last trustee, or the heir or last surviving devisee of a mortgagee, be living or dead, or on an allegation that any trustee or mortgagee has died intestate without an heir, or has died and it is not known who is his heir or devisee, then in any of such cases the fact that the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, has made an order upon such an allegation, shall be conclusive evidence of the matter so alleged in any Court of Law or Equity upon any question as to the legal validity of the order: Provided always, that nothing herein contained shall prevent the Court of Chancery directing a re-conveyance or re-assignment of any lands conveyed or assigned by any order under this Act, or a re-disposition of any contingent right conveyed or disposed of by such order; and it shall be lawful for the said Court to direct any of the parties to any suit concerning such lands or contingent right to pay any costs occasioned by the order under this Act, when the same shall appear to have been improperly obtained.”—13 & 14 Vict. c. 60, s. 44.

—What order shall be conclusive.

*The Trustee Act, 1850, s. 44.*

“Where in any suit commenced or to be commenced in the Court of Chancery, it shall be made to appear to the Court by affidavit that diligent search and inquiry has been made after any person made a defendant, who is only a trustee, to serve him with the process of the Court, and that he cannot be found, it shall be lawful for the said Court to hear and determine such cause, and to make such absolute decree therein against every person who shall appear to them to be only a trustee and not otherwise concerned in interest in the matter in question, in such and the same manner as if such trustee had been duly served with the process of the Court, and had appeared and filed his answer thereto, and had also appeared by his counsel and solicitor at the hearing of such cause: Provided always, that no such decree shall bind, affect, or in anywise prejudice any person against whom the same shall be made, without service of process upon him as aforesaid, his heirs, executors, or administrators, for or in respect of any estate, right, or interest which such person shall have at the

—And which order may be made in the absence of a defendant.

*The Trustee Act, 1850, s. 49.*

“time of making such decree, for his own use or benefit, or otherwise than as a trustee as aforesaid.”—13 & 14 Vict. c. 60, s. 49.

Costs may be paid out of the estate.

*The Trustee Act, 1850,*  
s. 51.

With reference to the costs of the proceedings, “The Trustee Act, 1850,” provides as follows :—

“The Lord Chancellor, intrusted as aforesaid, and the Court of Chancery, may order the costs and expenses of and relating to the petitions, orders, directions, conveyances, assignments, and transfers to be made in pursuance of this Act, or any of them, to be paid and raised out of or from the lands or personal estate, or the rents or produce thereof, in respect of which the same respectively shall be made, or in such manner as the said Lord Chancellor or Court shall think proper.”—13 & 14 Vict. c. 60, s. 51.

Order drawn up by registrar.

—Must be stamped if a vesting order.

*The Trustee Act, 1852,*  
s. 13.

The order made at the hearing must, it will be recollected, be drawn up by the registrar as soon as may be after it is procured.

In addition to the payment of usual Court fees for drawing it up, it is further required that if it be a vesting order it be stamped as a conveyance. For it is provided :—

“Every order to be made under ‘The Trustee Act, 1850,’ or this Act, which shall have the effect of a conveyance or assignment of any lands, or a transfer of any such stock as can only be transferred by stamped deed, shall be chargeable with the like amount of stamp duty as it would have been chargeable with if it had been a deed executed by the person or persons seised or possessed of such lands, or entitled to such stock ; and every such order shall be duly stamped for denoting the payment of the said duty.”—15 & 16 Vict. c. 55, s. 13.

Effect of an

The effect of an order made under “The Trustee Acts” is

“with the requisitions of the person in whose place such appointment shall have been made, and shall be equally indemnified in complying with the requisition of such person or persons so appointed as they would have been indemnified in complying with the requisition of the person in whose place such appointment shall have been made; and after notice in writing of any such order of the Lord Chancellor, intrusted as aforesaid, or of the Court of Chancery, concerning any stock shall have been given, it shall not be lawful for the Bank of England, or any company or association whatever, or any person having received such notice, to act upon the requisition of the person in whose place an appointment shall have been made in any matter whatever relating to the transfer of such stock, or the payment of the dividends or produce thereof.”—13 & 14 Vict. c. 60, s. 26.

“Where any order shall have been made under the provisions of this Act, either by the Lord Chancellor, intrusted as aforesaid, or by the Court of Chancery, vesting the legal right to sue for or recover any chose in action or any interest in respect thereof in any person or persons, such legal right shall vest accordingly, and thereupon it shall be lawful for the person or persons so appointed to carry on, commence, and prosecute, in his or their own name or names, any action, suit, or other proceeding at law or in equity for the recovery of such chose in action, in the same manner in all respects as the person in whose place an appointment shall have been made could have sued for or recovered such chose in action.”—13 & 14 Vict. c. 60, s. 27.

“Whosoever, under any of the provisions of this Act, an order shall be made either by the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, vesting any copyhold or customary lands in any person or persons, and such order shall be made with the consent of the lord or lady of the manor whereof such lands are holden, then the lands shall, without any surrender or admittance in respect thereof, vest accordingly; and whenever, under any of the provisions of this Act, an order shall be made either by the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, appointing any person or persons to convey or assign any copyhold or customary lands, it shall be lawful for such person or persons to do all acts and execute all instruments for the purpose of completing the assurance of such lands; and all such acts and instruments so done and executed shall have the same effect, and every lord and lady of a manor, and every other person, shall, subject to the customs of the manor, and the usual payments, be equally bound and compellable to make admittance to such lands, and to do all other acts for the purpose of completing the assurance thereof, as if the persons in whose place an appointment shall have been

—And to bring and maintain actions directed.

*The Trustee Act, 1850, s. 27.*

Order obliges lord of copyholds to admit tenant directed.

*The Trustee Act, 1850, s. 28.*

“made, being free from any disability, had duly done and executed such acts and instruments.”—13 & 14 Vict. c. 60, s. 28.

Bank of England and companies must comply with such orders.

*The Trustee Act, 1852,*  
s. 6.

“When any order being or purporting to be under this Act, or under ‘The Trustee Act, 1850,’ shall be made by the Lord Chancellor intrusted as aforesaid, or by the Court of Chancery, vesting the right to any stock, or vesting the right to transfer any stock, or vesting the right to call for the transfer of any stock, in any person or persons, in every such case the legal right to transfer such stock shall vest accordingly; and the person or persons so appointed shall be authorized and empowered to execute all deeds and powers of attorney, and to perform all acts relating to the transfer of such stock into his or their own name or names, or otherwise, to the extent and in conformity with the terms of the order; and the Bank of England, and all companies and associations whatever, and all persons, shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as the said Bank of England, or such companies, associations, or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made.”—15 & 16 Vict. c. 55, s. 6.

And are indemnified by the order.

*The Trustee Act, 1852,*  
s. 7.

“That every order made or to be made, being or purporting to be made under this or ‘The Trustee Act, 1850,’ by the Lord Chancellor intrusted as aforesaid, or by the Court of Chancery, and duly passed and entered, shall be a complete indemnity to the Bank of England, and all companies and associations whatsoever, and all persons, for any act done pursuant thereto; and it shall not be necessary for the Bank

"opinion, advice, or direction of such Judge on any question respecting the management or administration of the trust property or the assets of any testator or intestate, such application to be served upon or the hearing thereof to be attended by all persons interested in such application, or such of them as the said Judge shall think expedient; and the trustee, executor, or administrator acting upon the opinion, advice, or direction given by the said Judge shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor, or administrator in the subject-matter of the said application; provided nevertheless, that this Act shall not extend to indemnify any trustee, executor, or administrator in respect of any act done in accordance with such opinion, advice, or direction as aforesaid, if such trustee, executor, or administrator shall have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice, or direction; and the costs of such application as aforesaid shall be in the discretion of the Judge to whom the said application shall be made."—22 & 23 Vict. c. 35, s. 30.

As already pointed out (*b*), "The County Courts Act, 1865," provides that the jurisdiction conferred by the above enactments on the Chancery Division of the High Court, may be exercised by the County Courts where the trust estate or fund does not exceed in amount or value the sum of £500.

The proper persons to apply for advice, under section 30 of 22 & 23 Vict. c. 35, are "*any trustee, executor, or administrator*" (*c*). And the proper persons to be served are "*all persons interested in such application*" (*c*).

Trustees applying for advice from the County Court, under 22 & 23 Vict. c. 35, should, it seems, make their application to the County Court within the district of which any of the cestui que trust reside.

A very few remarks will suffice to dispose of the practice in proceedings under the enactment now being considered.

Applications to the Court by trustees for advice are required to be made by petition (*d*).

The Act, 23 & 24 Vict. c. 38 ("An Act to further Amend the Law of Property"), enacts that:—

"Where any trustee, executor, or administrator, shall apply for the opinion, advice, or direction of a Judge of the Court of Chancery under the thirtieth section of the Act of the twenty-second and twenty-third of Her present Majesty, chapter thirty-five, the petition or statement shall be signed by counsel, and the Judge by whom it is to be answered may

22 & 23 Vict.  
c. 35, s. 30.

Parties.

In what district application must be made.

Practice in proceedings.

—Proceedings must be commenced by petition.

—Signed by counsel.

23 & 24 Vict.  
c. 38, s. 9.

(*b*) *Ante*, Book II. cap. i. p. 200.

(*c*) 22 & 23 Vict. c. 35, s. 30.

(*d*) See Ord. xxxi. r. 15, *ante*, p. 1061.

“ require the petitioner or applicant to attend him by counsel  
“ either in chambers or in Court where he deems it necessary  
“ to have the assistance of counsel.”—23 & 24 Vict. c. 38, s. 9.

—Generally  
the same as  
on other  
petitions.

Speaking generally, the proceedings upon a petition by trustees for the advice of the Court are the same as on ordinary petitions ; and for details of the practice, reference must be made to the Introductory Chapter of the present Book (e).

The costs of every application, under section 30 of 22 & 23 Vict. c. 35, are, by the express terms of that section, in the discretion of the Judge to whom the application shall be made.

(e) See *ante*, p. 886 *et seq.*

## BOOK V.—DIVISION IV.

### PROCEEDINGS UNDER STATUTES CONFERRING AN ADMINISTRATIVE JURISDICTION.

#### CHAPTER II.

##### JURISDICTION AND PROCEEDINGS IN THE COUNTY COURT UNDER "THE PARTITION ACTS, 1868 AND 1876."

IN a previous chapter of this treatise (*a*) it was stated that the County Courts, by a recent statute, have had conferred upon them jurisdiction to decree partition. It is now proposed, in the present chapter, to treat, as briefly as possible, of such jurisdiction and of proceedings to obtain a partition.

Jurisdiction possessed by the County Courts in partition matters.

The Court of Chancery has long possessed a jurisdiction in matters of partition. Such jurisdiction has been greatly improved, and it has moreover been extended to County Courts by two recent Acts of Parliament: the first of which—31 & 32 Vict. c. 40—was passed in the year 1868; and the other of which—39 & 40 Vict. c. 17—was passed in the year 1876. A section in the latter Act provides:—

"The Partition Acts, 1868 and 1876."

"This Act may be cited as the Partition Act, 1876, and shall be read as one with the Partition Act, 1868."—39 & 40 Vict. c. 17, s. 1.

Short title and construction of Acts.

"This Act shall apply to actions pending at the time of the passing of this Act as well as to actions commenced after the passing thereof, and the term 'action' includes a suit, and the term 'judgment' includes decree or order."—39 & 40 Vict. c. 17, s. 2.

*The Partition Act, 1876, s. 1.*  
*Id., s. 2.*

"The Partition Act, 1868," provides as follows:—

"In England the County Courts shall have and exercise the like power and authority as the Court of Chancery in suits for partition (including the power and authority conferred by this Act) in any case where the property to which the suit relates does not exceed in value the sum of five hundred pounds, and the same shall be had and exercised in like manner and subject to the like provisions as the power and

In partition cases under £500, County Court to have jurisdiction.

(*a*) Book II. cap. i. p. 204, 205.

*The Partition Act, 1868,* “ authority conferred by section one of the County Courts Act, “ 1865.”—31 & 32 Vict. c. 40, s. 12.

*Construction of above enactment.*

*Power to transfer partition actions.*

It is to be noticed that the above section confers on the County Courts the like power and authority as the High Court in suits for partition where the subject matter does not exceed in amount or value £500. This jurisdiction is merely *concurrent* with that of the High Court of Justice. The latter Court has, however, exclusive jurisdiction over actions of partition where the subject matter does exceed the pecuniary limit of the County Court jurisdiction. It has been recently held that if a plaintiff, knowing before the commencement of the action, that the value of the property is above the County Court limit of value, alleges in his plaint that it is within the amount which gives the Court jurisdiction, such allegation shall not prevent the dismissal of the plaint under section 14 of “The County Court Act, 1867” (*b*). But that where the want of jurisdiction appears only from evidence produced *after* the institution of the action, the proper course is to order proceedings to be transferred to the Court of Chancery under the 9th section of “The County Court Act, 1865” (*c*).

*In what cases a partition action may be brought.*

It is not proposed in this chapter to treat fully of the power and authority of the High Court to decree partition. All that can be attempted will be to give a very brief outline of the cases in which such jurisdiction will be exercised.

—As to freehold.

Freehold property has always been capable of partition (*d*). And a statutory power to partition copyholds and customary freeholds is conferred by 4 & 5 Vict. c. 35, s. 85 (*e*). Manors are likewise partitionable (*f*).

—As to leasehold.

Leaseholds will not it seems be apportioned where the nature of the property and the interest of the parties does not appear to warrant such a proceeding (*g*). But, where there is no such



"to the like provisions, as the power and authority conferred "by section one of 'The County Courts Act, 1865'" (k).

The section of "The County Courts Act, 1865," here referred to has already been set out (l), and the mode of proceeding under it is sufficiently explained in Book II. of this work, where the various steps in an ordinary action (legal or equitable) are fully explained.

It will, therefore, be sufficient in this place to consider such provisions as exclusively concern proceedings under "The Partition Acts." Before doing so, it may be well to mention that power to frame general orders regulating the practice in regard to partition has been conferred by the following section of "The Partition Act, 1868 :"—

Power to frame general rules of practice.

"Sections nine, ten, and eleven of 'The Chancery Amendment Act, 1858,' relative to the making of general orders, shall have effect as if they were repeated in this Act, and in terms made applicable to the purposes thereof."—31 & 32 Vict. c. 40, s. 11.

No general orders have, however, yet been framed.

With regard to parties, "The Partition Act, 1868," provides as follows :—

Parties to partition actions.

"Any person who, if this Act had not been passed, might have maintained a suit for partition may maintain such suit against any one or more of the parties interested, without serving the other or others (if any) of those parties; and it shall not be competent to any defendant in the suit to object for want of parties; and at the hearing of the cause the Court may direct such inquiries as to the nature of the property, and the persons interested therein, and other matters, as it thinks necessary or proper with a view to an order for partition or sale being made on further consideration; but all persons who, if this Act had not been passed, would have been necessary parties to the suit, shall be served with notice of the decree or order on the hearing, and after such notice shall be bound by the proceedings as if they had been originally parties to the suit, and shall be deemed parties to the suit; and all such persons may have liberty to attend the proceedings; and any such person may, within a time limited by general orders, apply to the Court to add to the decree or order."—31 & 32 Vict. c. 40, s. 9.

*The Partition Act, 1868,*  
s. 9.

The above section provides that "any person, who if this Act had not been passed, might have maintained a suit for partition may maintain such suit." It is, therefore, necessary shortly to enumerate who might formerly have maintained partition suits. And the law on this subject will be found stated in a very useful treatise by Mr. Walker on the Partition Acts, where the authorities are collected (m).

Effect of above enactment.

(k) 31 & 32 Vict. c. 40, s. 12, *ante*, pp. 1069, 1070.

(l) *Ante*, pp. 200, 201.

(m) Pages 3—8.

—Partition  
actions by  
co-parceners.

It appears that co-parceners had a common law right of partition, and that a similar right was conferred upon joint tenants and tenants in common (*n*), whether holding for life or for years (*o*). Tenants by the curtesy may likewise claim partition (*p*), and tenants in tail enjoy a similar right (*q*).

—By rever-  
sioners.

A reversioner, on the other hand, cannot obtain a partition, for he has no estate in possession (*r*). And it is doubtful whether a mortgagee can institute an action for a partition (*s*).

—By persons  
of unsound  
mind.

Whether a person of unsound mind can be plaintiff in a partition action would seem a little doubtful (*t*). It will, however, presently be seen that such a person can, in a partition action, request a sale of the property (*u*).

—By persons  
under dis-  
ability.

As regards other parties under disability, such as married women and infants, they can, it would appear, institute a partition action (*x*), and request a sale of the property (*y*).

—And *against*  
parties gene-  
rally inte-  
rested.

As regards the persons to be made defendants in a partition action, it will be sufficient to observe that section 9 of "The Partition Act, 1868" (*z*), provides that the action may be maintained against "any one or more of the parties interested, " without serving the other or others (if any) of those parties ; " and it shall not be competent to any defendant in the suit to " object for want of parties."

Commence-  
ment of and  
practice on  
proceedings.

The mode of commencing proceedings, and the practice upon such proceedings, are precisely the same as in any ordinary legal or equitable action ; and it is fully stated in the Second Book of the present work (*a*).

Hearing of  
action for  
partition.

The proceedings which may take place on the hearing of an action for partition, and the powers which the Court may then exercise, now require consideration.

Power to  
direct in-  
quiries

By a section in "The Partition Act, 1868," it is provided that :—

“to the suit, shall be served with notice of the decree or order  
 “on the hearing, and after such notice shall be bound by the  
 “proceedings as if they had been originally parties to the suit,  
 “and shall be deemed parties to the suit; and all such persons  
 “may have liberty to attend the proceedings; and any such  
 “person may, within a time limited by general orders, apply  
 “to the Court to add to the decree or order” (c).—31 & 32 Vict.  
 c. 40, s. 7.

This enactment has been amended by “The Partition Act, 1876,” which provides as follows:—

“Where in an action for partition it appears to the Court  
 “that notice of the judgment on the hearing of the cause cannot  
 “be served on all the persons on whom that notice is by ‘The  
 “Partition Act, 1868,’ required to be served, or cannot be so  
 “served without expense disproportionate to the value of the  
 “property to which the action relates, the Court may, if it  
 “thinks fit, on the request of any of the parties interested in  
 “the property, and notwithstanding the dissent or disability of  
 “any others of them, by order, dispense with that service on  
 “any person or class of persons specified in the order, and,  
 “instead thereof, may direct advertisements to be published at  
 “such times and in such manner as the Court shall think fit,  
 “calling upon all persons claiming to be interested in such  
 “property who have not been so served to come in and esta-  
 “blish their respective claims in respect thereof before the  
 “Judge in chambers within a time to be thereby limited. After  
 “the expiration of the time so limited all persons who shall  
 “not have so come in and established such claims, whether  
 “they are within or without the jurisdiction of the Court (in-  
 “cluding persons under any disability), shall be bound by the  
 “proceedings in the action as if on the day of the date of the  
 “order dispensing with service they had been served with  
 “notice of the judgment, service whereof is dispensed with;  
 “and thereupon the powers of the Court under ‘The Trustee  
 “Act, 1850,’ shall extend to their interests in the property to  
 “which the action relates as if they had been parties to the  
 “action; and the Court may thereupon, if it shall think fit,  
 “direct a sale of the property and give all necessary or proper  
 “consequential directions.”—39 & 40 Vict. c. 17, s. 3.

Power to  
dispense with  
service of  
notice of  
decree or  
order in  
special cases.

*The Partition  
Act, 1876,  
s. 3.*

“Where an order is made under this Act dispensing with  
 “service of notice on any person or class of persons, and pro-  
 “perty is sold by order of the Court, the following provisions  
 “shall have effect:

Proceedings  
where service  
is dispensed  
with.

“(1.) The proceeds of sale shall be paid into Court to  
 “abide the further order of the Court:

(c) No general orders have been made, and consequently these words, “any such person may, within a time limited by general orders, apply,” &c., have no effect. See *Walker's Partition Acts*, p. 40.

*The Partition  
Act, 1876,  
s. 4.*

- “(2.) The Court shall, by order, fix a time, at the expiration of which the proceeds will be distributed, and may from time to time, by further order, extend that time :
- “(3.) The Court shall direct such notices to be given by advertisements or otherwise as it thinks best adapted for notifying to any persons on whom service is dispensed with, who may not have previously come in and established their claims, the fact of the sale, the time of the intended distribution, and the time within which a claim to participate in the proceeds must be made :
- “(4.) If at the expiration of the time so fixed or extended the interests of all the persons interested have been ascertained, the Court shall distribute the proceeds in accordance with the rights of those persons :
- “(5.) If at the expiration of the time so fixed or extended the interests of all the persons interested have not been ascertained, and it appears to the Court that they cannot be ascertained, or cannot be ascertained without expense disproportionate to the value of the property or of the unascertained interests, the Court shall distribute the proceeds in such manner as appears to the Court to be most in accordance with the rights of the persons whose claims to participate in the proceeds have been established, whether all those persons are or are not before the Court, and with such reservations (if any) as to the Court may seem fit in favour of any

“shall be sufficient to claim a sale and distribution of the proceeds, and it shall not be necessary to claim a partition.”—*The Partition Act, 1876, s. 7.*  
39 & 40 Vict. c. 17, s. 7.

“In a suit for partition, where, if this Act had not been passed, a decree for partition might have been made (d), then if it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of some of those parties, or of any other circumstance, a sale of the property and a distribution of the proceeds would be more beneficial for the parties interested than a division of the property between or among them, the Court may, if it thinks fit, on the request of any of the parties interested, and notwithstanding the dissent or disability of any others of them, direct a sale of the property accordingly, and may give all necessary or proper consequential directions.”—31 & 32 Vict. c. 40, s. 3. *The Partition Act, 1868, s. 3.*

The power of directing a sale instead of a division of the property, conferred by the above section, may, it is to be noticed, be exercised notwithstanding the dissent or disability of some of the parties interested. *Effect of above enactments.*

A sale may be directed by the Court on the application of a certain proportion of the parties interested. This is provided by the following section of “The Partition Act, 1868 :”—

“In a suit for partition, where, if this Act had not been passed, a decree for partition might have been made, then if the party or parties interested, individually or collectively, to the extent of one moiety or upwards in the property to which the suit relates, request the Court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among the parties interested, the Court shall, unless it sees good reason to the contrary, direct a sale of the property accordingly, and give all necessary or proper consequential directions.”—31 & 32 Vict. c. 40, s. 4. *Sale may be directed on application of owners of a moiety or upwards. The Partition Act, 1868, s. 4.*

The sections already set out do not enable a sale to take place at the request of parties under disability, and no power to this effect was contained in the Act of 1868. The law has, however, been amended in this respect, by “The Partition Act, 1876,” which provides as follows :—

“In an action for partition a request for sale may be made or an undertaking to purchase given on the part of a married woman, infant, person of unsound mind, or person under any other disability, by the next friend, guardian, committee in lunacy (if so authorised by order in lunacy), or other person authorised to act on behalf of the person under such disability, but the Court shall not be bound to comply with any” *The Partition Act, 1876, s. 6.*

(d) As to the exact meaning of these words, see *Pryor v. Pryor*, L. R. 19 Eq. 508.

“such request or undertaking on the part of an infant unless it appear that the sale or purchase will be for his benefit.”—39 & 40 Vict. c. 17, s. 6.

As to purchase of share of party desiring a share.

*The Partition Act, 1868,*  
s. 5.

Where, in pursuance of the statutory powers above noticed, a sale is directed, the following provisions of “The Partition Act, 1868,” apply :—

“In a suit for partition, where, if this Act had not been passed, a decree for partition might have been made, then if any party interested in the property to which the suit relates request the Court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among the parties interested, the Court may, if it thinks fit, unless the other parties interested in the property, or some of them, undertake to purchase the share of the party requesting a sale, direct a sale of the property, and give all necessary or proper consequential directions, and in case of such undertaking being given the Court may order a valuation of the share of the party requesting a sale in such manner as the Court thinks fit, and may give all necessary or proper consequential directions.”—31 & 32 Vict. c. 40, s. 5.

Authority for parties interested to bid.

*The Partition Act, 1868,*  
s. 6.

“On any sale under this Act the Court may, if it thinks fit, allow any of the parties interested in the property to bid at the sale, on such terms as to nonpayment of deposit, or as to setting off or accounting for the purchase-money or any part thereof instead of paying the same, or as to any other matters, as to the Court seem reasonable.”—31 & 32 Vict. c. 40, s. 6.

Application of Trustee Act.

*The Partition Act, 1868,*

“Section thirty of ‘The Trustee Act, 1850,’ shall extend and apply to cases where, in suits for partition, the Court directs a sale instead of a division of the property.”—31 & 32 Vict. c. 40, s. 7.

“ participation of the excluded person in the proceeds of the  
 “ previous sale, and shall to that extent be applied in or  
 “ towards payment to that person of the share to which he  
 “ would have been entitled in the proceeds of the previous sale  
 “ if his claim thereto had been established in due time.”—  
 39 & 40 Vict. c. 17, s. 5.

*The Partition  
 Act, 1868,  
 s. 5.*

An absolute discretion as to costs in partition actions is  
 vested in the Court by the following section of “ The Partition  
 Act, 1868 : ”—

*Costs.*

“ In a suit for partition the Court may make such order as  
 “ it thinks just respecting costs up to the time of the hearing.”  
 —31 & 32 Vict. c. 40, s. 10.

*The Partition  
 Act, 1868,  
 s. 10.*

## BOOK V.—DIVISION IV.

### PROCEEDINGS UNDER STATUTES CONFERRING AN ADMINISTRATIVE JURISDICTION.

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#### CHAPTER III.

##### PROCEEDINGS TO TAKE THE ACKNOWLEDGMENTS OF MARRIED WOMEN.

A married woman may now convey her real property and her reversionary personal property by deed.

Such deed must be acknowledged.

*The Act for the Abolition*

THE “Act for the Abolition of Fines and Recoveries” enables (a) a married woman to convey by deed any real property (b) belonging to her, and a later enactment enables her similarly to convey her reversionary interest in personal property (of which she was previously unable to dispose).

But any deed executed by a married woman must be “acknowledged” by her in accordance with a section in the following terms contained in “The Act for the Abolition of Fines and Recoveries” :—

“Every deed to be executed by a married woman for any of the purposes of this Act, except such as may be executed by her in the character of protector for the sole purpose of



"The County Court Act, 1856," provides as follows :—

"Any acknowledgment to be made by any married woman of any deed under the Act of the third and fourth years of the reign of His late Majesty King William the Fourth, chapter seventy-four, may be received by a Judge of a County Court in the same manner as such acknowledgment may be received by a Judge of a superior Court."—19 & 20 Vict. c. 108, s. 73.

Such acknowledgment may now be taken by a County Court Judge. 19 & 20 Vict. c. 108, s. 73.

The acknowledgment of a deed is not impeachable by reason only of the Judge or other party before whom the same was taken being interested (*e*).

Interest in the Judge does not invalidate deed.

Before the acknowledgment is taken, the fee, which is now £1, must be impressed upon the certificate (*f*).

Fees on acknowledgments.

The supplemental Rules of Hilary Term, 1834, moreover provide as follows :—

"And it is further ordered, That where more than one married woman shall at the same time acknowledge the same deed, respecting the same property, the fees directed by the said rules to be taken, shall be taken for the first acknowledgment only.

"And the fees to be taken for the other acknowledgment or acknowledgments, how many soever the same may be, shall be one-half of the original fees, and so also, where the same married woman shall at the same time acknowledge more than one deed respecting the same property.

"And where, in either of the above cases, there shall be more than one acknowledgment, all such acknowledgments may be included in one certificate and affidavit.

"In every case the acknowledgment of a lease and re-lease shall be considered and paid for as one acknowledgment only."

The practice upon taking an acknowledgment of a deed by a married woman is as follows :—

Practice.

(1.) The *first* thing to be done, where a married woman desires to make an acknowledgment of a deed, is for her, upon her executing the same, or afterwards, to produce the deed to the County Court Judge for the purpose of making the acknowledgment (*g*).

(1.) Production of the deed to be acknowledged.

(2.) The *second* step to be taken, is the *separate* examination of the married woman by the County Court Judge. On this subject "The Act for the Abolition of Fines and Recoveries" provides as follows :—

(2.) Separate examination of a married woman.

"Such Judge, master in chancery, or commissioners aforesaid, before he or they shall receive the acknowledgment by any married woman of any deed by which any disposition,

Judge, &c., before receiving acknowledgment

(*e*) 17 & 18 Vict. c. 75. s. 1.

(*f*) As to the certificate, see *post*, p. 1081 *et seq.*

(*g*) 3 & 4 Will. IV. c. 74, s. 79, *ante*, p. 1078 *et seq.*

must examine the married woman apart from her husband.

*The Act for the Abolition of Fines and Recoveries,* s. 80.

Decisions as to the conduct of the separate examination.

(3.) The taking of the acknowledgment.

(4.) The memorandum and certificate of acknowledgment.

Judge must sign a memorandum on the deed.

“release, surrender, or extinguishment shall be made by her  
“under this Act, shall examine her, apart from her husband,  
“touching her knowledge of such deed, and shall ascertain  
“whether she freely and voluntarily consent to such deed, and,  
“unless she freely and voluntarily consent to such deed, shall  
“not permit her to acknowledge the same; and in such case  
“such deed shall, so far as relates to the execution thereof by  
“such married woman, be void.”—3 & 4 Will. IV. c. 74, s. 80.

The separate examination of a married woman under this section ought to take place, not only in the absence of the husband, whose presence is expressly forbidden by this section, but also in the absence of any one connected with the husband (*h*). The acknowledgment of a married woman who is deaf and dumb may be taken, provided she is previously examined and made aware of the nature of the transaction by signs, and she signifies her assent in like manner (*i*).

(3.) In the third place, we come to the acknowledgment itself. This is simply a verbal admission or statement made by the married woman, in the presence of the County Court Judge, after such enquiries as he may be pleased to make on the subject, that the deed produced by her is her act and deed (*k*).

(4.) The fourth step in the proceedings is of a two-fold character. It consists in the Judge's signing and giving a certificate of acknowledgment.

The *memorandum* is indorsed on the deed itself, or written at the foot of it, and is to the effect that the deed was produced and acknowledged by the married woman after her separate examination; and with regard to the *certificate*, it is a separate document, written on parchment, and states officially what has

'to which acknowledgment the said                      was examined by me  
'[or, us], separately and apart from her husband, touching her know-  
ledge of the contents of the said deed and her consent thereto, and  
'declared the same to be freely and voluntarily executed by her.'

“ And the same Judge, master in chancery or commissioners, shall also sign a certificate of the taking of such acknowledgment, to be written or engrossed on a separate piece of parchment, which certificate, subject to any alteration which may from time to time be directed by the Court of Common Pleas, shall be to the following effect ; *videlicet*,

\* These are to certify that on the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ one thousand eight hundred and \_\_\_\_\_, before me the undersigned (I), appeared personally \_\_\_\_\_, the wife of \_\_\_\_\_ and produced a certain indenture, marked [here add the mark], bearing date the \_\_\_\_\_ day of \_\_\_\_\_, and made between [insert the names of the parties], and acknowledged the same to be her act and deed: and I do hereby certify that the said \_\_\_\_\_ was, at the time of her acknowledging the said deed, of full age and complete understanding, and that she was examined by me apart from her husband touching her knowledge of the contents of the said deed, and that she freely and voluntarily consented to the same.”—3 & 4 Will. IV. c. 74, s. 84.

The General Rules of Hilary Term, 1834, framed by the Court of Common Pleas, pursuant to 3 & 4 Will. IV. c. 74, are still operative (*m*), and expressly provide that the certificate of acknowledgment shall be in the form contained in the last mentioned Act (*n*). However, a certificate of acknowledgment which merely stated that a married woman was, as the commissioners believed, of full age, was allowed to be filed (*o*).

It is to be noticed that section 84 of 3 & 4 Will. IV. c. 74, provides, with respect both to the memorandum and certificate of acknowledgment, that it is "subject to any alteration which may from time to time be directed by the Court of Common Pleas." This power, conferred upon the Court of Common Pleas, may now, it is submitted, be exercised by the Common Pleas Division of the High Court (*p*), which has accordingly power to vary the form of the certificate where the justice of the case requires it, and the Act cannot otherwise be carried into effect (*q*).

Power of Common Pleas to vary form of certificate.

The Court of Common Pleas refused to allow the *amendment* of the certificate of the acknowledgment by a married woman of a deed conveying an interest in land, where the certificate erroneously stated the acknowledgment of the deed to have been taken on a particular day (*r*). So where a

(f) Here insert the name of the County Court Judge receiving the acknowledgment.

(m) 38 & 39 Vict. c. 77, s. 21.

(n) R. G. H. T. 4, *post*, pp. 1082—1084.

(o) *Ex parte Willis*, 7 C. B. N. S. 303; 6 Jur. N. S. 201.

(p) 36 & 37 Vict. c. 66, s. 34.

(q) *In re Lake*, 1 Scott, 80.

(r) *In re Millard*, 5 C. B. 753.

certificate and the affidavit thereof, stated the party to have executed deeds of lease and release, whereas she executed the latter only, the Court refused to allow the certificate to be amended (s).

Effect of loss  
of the certi-  
ficate.

Where a Judge has given a certificate of acknowledgment under 3 & 4 Will. IV. c. 74, and it is lost before it is lodged, the Common Pleas Division of the High Court has no power it seems to authorise the Judge to give a fresh one (t). Though it would seem that if a fresh one be given it will be valid (u).

(5.) Affidavit  
verifying  
certificate of  
acknowledg-  
ment must be  
prepared and  
lodged.

(5.) Fifthly—The acknowledgment having been duly taken, and his certificate of the acknowledgment, an affidavit verifying the same must be prepared, and it and the certificate both lodged together with the proper officer of the Common Pleas Division of the High Court. For “The Act for the Abolition of Fines and Recoveries” provides as follows:—

*The Act for  
the Abolition  
of Fines and  
Recoveries.*  
s. 85.

“ Every such certificate as aforesaid of the taking of an  
“ acknowledgment by a married woman of any such deed as  
“ aforesaid together with an affidavit by some person verifying  
“ the same, and the signature thereof by the party by whom  
“ the same shall purport to be signed shall be lodged with  
“ some officer of the Court of Common Pleas at Westminster  
“ to be appointed as hereinafter mentioned; and such officer  
“ shall examine the certificate, and see that it is duly signed  
“ either by some Judge or Master in Chancery or by two com-  
“ missioners appointed pursuant to this Act, and duly verified  
“ by affidavit as aforesaid, and shall also see that it contains  
“ such statements of particulars, as to the consent of the  
“ married woman, as shall from time to time be required in  
“ that behalf; and if all the requisites in this Act in regard to  
“ the certificate shall have been complied with then such officer  
“ shall cause the said certificate and the affidavit to be filed of

“join in the affidavit, that one or more of the deponents) knew  
“the person or persons making such acknowledgment : and  
“that at the time of making such acknowledgment, the person  
“or persons making the same was or were of full age and  
“competent understanding (x) : and that one at least of the  
“commissioners taking such acknowledgment, to the best of  
“his, deponent’s, knowledge and belief, is not in any manner  
“interested in the transaction giving occasion for the taking  
“of such acknowledgment, or concerned therein as attorney,  
“solicitor, or agent, or as clerk to any attorney, solicitor, or  
“agent so interested or concerned, and that the names and  
“residences of the said commissioners, and also the place or  
“places where such acknowledgment or acknowledgments shall  
“be taken, shall be set forth in such affidavit : *and that pre-  
“viously to such acknowledgment being taken, the deponent had  
“inquired of such married woman (or if more than one of each  
“of such married women), whether she intended to give up her  
“interest in the estate to be passed, and also the answer given  
“thereto ; and where any such married woman in answer to  
“such inquiry shall declare that she intends to give up her in-  
“terest without any provision, the deponent shall state that he  
“has no reason to doubt the truth of such declaration, and he  
“verily believes the same to be true. And where any provision  
“has been agreed to be made, the deponent shall state that the  
“same has been made by deed or writing, or if not actually made  
“before that the terms of the intended provision have been re-  
“duced into writing, which deed or writing he verily believes  
“has been produced to the said (Judge) (Master, or) Com-  
“missioners.*

“ And it is hereby further ordered, that the affidavit shall  
“ state the parish or several parishes, or place or several places,  
“ and the county or counties, in which the several premises  
“ wherein any such married woman shall appear to be interested,  
“ shall by deed be described to be situate.

“ And it is hereby further ordered, that the affidavit shall be  
“ in the form hereunto annexed (y), subject to such variations as

(x) As to this part of the affidavit, see *infra*.

(v) The following is the Form:—

**" IN THE HIGH COURT OF JUSTICE.**

"COMMON PLEAS DIVISION.

"A. B. of \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_, Gentleman,  
 "one of the Solicitors of the Supreme Court, maketh oath and saith that  
 "he knows \_\_\_\_\_ the wife of \_\_\_\_\_ in the Certificate hereunto annexed men-  
 "tioned, and that the Acknowledgment therein mentioned was made by the  
 "said \_\_\_\_\_ and the Certificate signed by the Judge or Master,—or by  
 "A. B. of &c., and C. D. of, &c., the Commissioners in the said Certificate men-  
 "tioned,—on the day and year therein mentioned, at \_\_\_\_\_ in the \_\_\_\_\_ of  
 "\_\_\_\_\_ in the presence of this Deponent, and that at the time of making such  
 "Acknowledgment the said \_\_\_\_\_ was of full age and competent understand-  
 "ing, and that the said \_\_\_\_\_ knew the said Acknowledgment was intended to  
 "pass her estate in the premises respecting which such Acknowledgment was made.  
 "[And this Deponent further saith, that to the best of this Deponent's knowledge

“the circumstances of the case shall render necessary, or such affidavit may be made, where it is found convenient by one of the said commissioners, with such variation in the form thereof as shall be necessary in that behalf.”

And the rules of 1862 in addition provide as follows :—

“From and after the first day of Easter Term next, inclusive, every affidavit of the verification of certificates of acknowledgments of deeds of married women, except as hereinafter provided, shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject : Provided that this rule shall not be applicable to any such affidavits, where the acknowledgments have been taken out of England and Wales under special commissions issued prior to the said first day of Easter Term next (z).”—R. G. M. T. r. 1.

Affidavit  
should be on  
parchment.

And without  
alterations or  
erasures.

The affidavit *should* be on *parchment*, not on *paper* ; but it will be filed, though written on paper (a).

As regards alterations in the affidavit, whether in the shape of *interlineations* or *erasures*, if they be in *important* parts, the affidavit will, it appears, be rejected, unless evidence is forthcoming to show that the alterations were made *before* it was

“and belief, neither of the said Commissioners is—(or the said A. B.—or the said C. D.—one of the said Commissioners is not)—in any manner interested in the transaction giving occasion for such Acknowledgment, or concerned therein as Solicitor, or agent, or as Clerk to any Solicitor, or Agent, so interested or concerned.] And this deponent further saith, that previous to the said (the married woman) making the said Acknowledgment, he this deponent inquired of the said (the married woman)—or, if more than one, of each of them the said and (the married women)—whether she intended to give up her interest in the estates, in respect of which such acknowledgment was taken without having any provision made for her in lieu of, or in return for, or in consequence of her so

sworn (b). If, on the other hand, the alterations be *immaterial*, the affidavit will be allowed to pass without objection (c).

The form of affidavit of verification provided by the Rules of Hilary Term, 1834, should be followed, in all cases, as closely as possible. However, where an affidavit varied from such form in its title and commencement, it was, notwithstanding, allowed to pass, as the affidavit was one upon which perjury could be assigned (d). And where in the deed of conveyance, certificate of acknowledgment, and affidavit of verification, a married woman was described as the reputed wife of A. B., otherwise B. C., spinster, the certificate and affidavit were directed by the Court to be filed (e).

And should follow the forms provided.

In the recent case of *In re Packer* (f), the Court of Common Pleas ordered a certificate of acknowledgment, and affidavits verifying it, to be filed, though the affidavits did not strictly comply with the rules of Hilary Term, 1834, it being shown that under the circumstances, it was impossible to obtain affidavits in accordance with those rules, and that the affidavits did comply with all the provisions of 3 & 4 Will. IV. c. 74.

It is to be noticed that these rules provide that the affidavit verifying the certificate shall be made by some *practising solicitor*, who must, amongst other things, depose, that, at the time of the making of the acknowledgment, the person making the same was of full age and competent understanding. A supplemental rule, however, was afterwards framed to meet cases where a solicitor cannot himself depose to this effect. The rule in question is as follows :—

Affidavit as to age, &c., of the examined woman may be made by a person other than a solicitor.

“ It is ordered, that from and after the last day of this term, “ where such parts of the affidavit, verifying the certificate of “ acknowledgment taken in pursuance of the late Act of Parliament, respecting fines and recoveries, as state ‘ the deponent’s knowledge of the party making the acknowledgment, “ and her being of full age ; ’ cannot be deposed to by a commissioner, or by an attorney or solicitor, the same may be “ deposed to by some other person, whom the person before “ whom the affidavit shall be made shall consider competent so “ to do.”—R. G. H. T. 1834, r. 1.

This rule does not, however, dispense with the necessity, which still exists, of some competent person deposing to the age and soundness of mind of the person making the acknowledgment. And the decisions as to the sufficiency of the statutory affidavit verifying an acknowledgment, show clearly

Decisions as to this.

(b) As to *interlineations*, see *Re Bingle*, 15 C. B. 449; *Re Worthington*, 5 C. B. 511; *Re Page*, 5 Dowl. & L. 475; *Re Fagan*, 5 C. B. 436; *Re Tierney*, 15 C. B. 761. As to *erasures*, see *Re Millard*, 6 Dowl. & L. 86; *Anon.*, 16 C. B. 574; *Re Tierney*, *ubi supra*; *Re Denton*, 6 C. B. N. S. 287.

(c) See *Anon.*, 16 C. B. 574.

(d) *Re Shaw*, 3 M. & G. 236.

(e) *Ex parte Francis*, 5 C. B. 498; 17 L. J. C. P. 110.

(f) L. R. 5 C. P. 424.

that the Courts are disposed to adhere literally to the requirements of the statute. Thus, it has been held that the affidavit must, in general, state *positively*, and not as a matter of *belief* merely, that the woman is of full age. Otherwise the certificate will not be filed (*g*). But, as already stated, a *certificate* which merely stated the *belief* of the commissioner that the married woman was of full age, was allowed to be filed (*h*).

—The certificate and affidavit must be lodged within one month.

The Rules of Hilary Term, 1834, require that the certificate and affidavit of verification shall be filed within a specified time. They provide as follows :—

“ And it is hereby further ordered, that the certificates and affidavits verifying the same, shall, within one month from the making the acknowledgment, be delivered to the proper officer appointed under the said Act ; and that the officer shall not after that time receive the same without the direction of the Court or a Judge.”

—But Court under special circumstances will extend the time.

However, the Court of Common Pleas allowed a certificate of acknowledgment, and affidavit verifying the same, to be received and filed by the proper officer after a lapse of six years, upon an affidavit showing that the failure to comply with the rule of Hilary Term, 4 Wm. IV., arose from inadvertency, and upon being satisfied (by affidavit) that the property had been so dealt with in the interim, that no one could be prejudiced thereby (*i*). And, in another case, where thirteen years had elapsed since the acknowledgment, the Court allowed the certificate to be filed, and an affidavit verifying it filed (*k*).

The affidavit of verification may, it would appear, be filed subsequently to the filing of the certificate (*l*).

(*g*) *Re Coverley*, 8 Scott, 147 ; but see *Re Luke*, 1 Scott, 80 ; S. C. 1 Bing.



## BOOK V.—DIVISION IV.

### PROCEEDINGS UNDER STATUTES CONFERRING AN ADMINISTRATIVE JURISDICTION.

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#### CHAPTER IV.

##### JURISDICTION AND PROCEEDINGS UNDER "THE MARRIED WOMEN'S PROPERTY ACT, 1870."

"THE Married Women's Property Act, 1870," confers upon the County Court a twofold jurisdiction. (1) It gives the Courts *concurrent jurisdiction* with the High Court, in any question "between husband and wife, as to property declared "by this Act to be the separate property of the wife" (a). (2) Secondly it confers on the County Court power to appoint a trustee of a policy of insurance effected by any married man on his own life, and expressed upon the face of it to be for the benefit of his wife or of his wife and children, or any of them (b). It will be most convenient to consider separately the two kinds of jurisdiction thus created by the Act.

Jurisdiction  
of County  
Courts under  
"The Married  
Women's Pro-  
perty Act,  
1870," is  
twofold.

##### SECTION I.—JURISDICTION AND PROCEEDINGS IN QUESTIONS BETWEEN HUSBAND AND WIFE AS TO THE WIFE'S SEPARATE PROPERTY.

The following sections of "The Married Women's Property Act, 1870," declare what shall be *separate property* under the Act. They are, therefore, set out in this place :

"The wages and earnings of any married woman acquired or gained by her after the passing of this Act in any employment, occupation, or trade in which she is engaged or which she carries on separately from her husband, and also any money or property so acquired by her through the exercise of any literary, artistic, or scientific skill, and all investments of such wages, earnings, money, or property, shall be deemed

Separate  
property  
of married  
women created  
by "The Mar-  
ried Women's  
Property Act,  
1870."

Earnings of  
married  
women.

(a) 33 & 34 Vict. c. 93, s. 9, *post*, pp. 1090, 1091.

(b) 33 & 34 Vict. c. 93, s. 10, *post*, pp. 1091, 1092.

*The Married  
Women's  
Property Act,  
1870, s. 1.*

“and taken to be property held and settled to her separate use, independent of any husband to whom she may be married, and her receipts alone shall be a good discharge for such wages, earnings, money, and property.”—33 & 34 Vict. c. 93, s. 1.

—Deposits in  
savings banks  
by a married  
woman.

*The Married  
Women's  
Property Act,  
1870, s. 2.*

“Notwithstanding any provision to the contrary in the Act of the tenth year of George the Fourth, chapter twenty-four, enabling the commissioners for the reduction of the National Debt to grant life annuities and annuities for terms of years, or in the Acts relating to savings banks and post-office savings banks, any deposit hereafter made, and any annuity granted by the said commissioners under any of the said Acts in the name of a married woman, or in the name of a woman who may marry after such deposit or grant, shall be deemed to be the separate property of such woman, and the same shall be accounted for and paid to her as if she were an unmarried woman; provided that if any such deposit is made by, or such annuity granted to, a married woman by means of moneys of her husband without his consent, the Court may, upon an application under section nine of this Act, order such deposit or annuity or any part thereof to be paid to the husband.”—33 & 34 Vict. c. 93, s. 2.

Proviso.

—Property  
in the funds  
standing re-  
gistered as  
her separate  
property.

*The Married  
Women's  
Property Act,  
1870, s. 2.*

“Any married woman, or any woman about to be married, may apply to the governor and company of the Bank of England, or to the governor and company of the Bank of Ireland, by a form to be provided by the governor of each of the said banks and company for that purpose, that any sum forming part of the public stocks and funds, and not being less than twenty pounds, to which the woman so applying is entitled, or which she is about to acquire, may be transferred to or made to stand in the books of the governor

“tached, and to which the woman so applying is entitled, may be registered in the books of the said company in the name or intended name of the woman as a married woman entitled to her separate use, and it shall be the duty of such directors or managers to register such shares or stock accordingly, and the same upon being so registered shall be deemed to be the separate property of such woman, and shall be transferred and the dividends and profits paid as if she were an unmarried woman; provided that if any such investment as last mentioned is made by a married woman by means of moneys of her husband without his consent, the Court may, upon an application under section nine of this Act, order such investment, and the dividends and profits thereon, or any part thereof, to be transferred and paid to the husband.”—33 & 34 Vict. c. 93, s. 4.

her separate property.

*The Married Women's Property Act, 1870, s. 4.*

“Any married woman, or any woman about to be married, may apply in writing to the committee of management of any industrial and provident society, or to the trustees of any friendly society, benefit building society, or loan society, duly registered, certified, or enrolled under the Acts relating to such societies respectively, that any share, benefit, debenture, right, or claim whatsoever in, to, or upon the funds of such society, to the holding of which share, benefit, or debenture no liability is attached, and to which the woman so applying is entitled, may be entered in the books of the society in the name or intended name of the woman as a married woman entitled to her separate use, and it shall be the duty of such committee or trustees to cause the same to be so entered, and thereupon such share, benefit, debenture, right, or claim shall be deemed to be the separate property of such woman, and shall be transferable and payable with all dividends and profits thereon as if she were an unmarried woman; provided that if any such share, benefit, debenture, right, or claim has been obtained by a married woman by means of moneys of her husband without his consent, the Court may, upon an application under section nine of this Act, order the same and the dividends and profits thereon, or any part thereof, to be transferred and paid to the husband.”—33 & 34 Vict. c. 93, s. 5.

—Property of married women in friendly, industrial, or provident societies registered as her separate property.

*The Married Women's Property Act, 1870, s. 5.*

“Nothing hereinbefore contained in reference to moneys deposited in or annuities granted by savings banks or moneys invested in the funds or in shares or stock of any company shall as against creditors of the husband give validity to any deposit or investment of moneys of the husband made in fraud of such creditors, and any moneys so deposited or invested may be followed as if this Act had not passed.”—33 & 34 Vict. c. 93, s. 6.

But a deposit of moneys in fraud of creditors invalid.

*The Married Women's Property Act, 1870, s. 6.*

“Where any woman married after the passing of this Act shall during her marriage become entitled to any personal

Personal property of a mar-

ried woman accruing during marriage to be for her separate use.

*The Married Women's Property Act, 1870, s. 7.*

Freehold property of a married woman accruing during marriage to be for her separate use.

*The Married Women's Property Act, 1870, s. 8.*

Married women may sue, &c. in her own name in respect of her separate property.

*The Married Women's Property Act, 1870, s. 11.*

“property as next of kin or one of the next of kin of an intestate, or to any sum of money not exceeding two hundred pounds under any deed or will, such property shall, subject and without prejudice to the trusts of any settlement affecting the same, belong to the woman for her separate use, and her receipts alone shall be a good discharge for the same.”—33 & 34 Vict. c. 93, s. 7.

“Where any freehold, copyhold, or customaryhold property shall descend upon any woman married after the passing of this Act as heiress or co-heiress of an intestate, the rents and profits of such property shall, subject and without prejudice to the trusts of any settlement affecting the same, belong to such woman for her separate use, and her receipts alone shall be a good discharge for the same.”—33 & 34 Vict. c. 93, s. 8.

It is also provided that a married woman may in respect of her separate property, sue and be sued alone. Such provision is as follows :—

“A married woman may maintain an action in her own name for the recovery of any wages, earnings, money, and property by this Act declared to be her separate property, or of any property belonging to her before marriage, and which her husband shall, by writing under his hand, have agreed with her shall belong to her after marriage as her separate property, and she shall have in her own name the same remedies, both civil and criminal, against all persons whomsoever for the protection and security of such wages, earnings, money, and property, and of any chattels or other property purchased or obtained by means thereof for her own use, as if such wages, earnings, money, chattels, and property belonged to her as an unmarried woman : and in

"same Judge made in a pending suit or on an equitable  
"plaint would have been, and the Judge may, if either party  
"so require, hear the application in his private room."—33  
& 34 Vict. c. 93, s. 9.

An application, under section 9 of "The Married Women's  
Property Act, 1870," may be made by either husband or wife,  
as is expressly provided by that section (c).

Parties to  
proceedings.

Proceedings under this section (section 9) of the Act are  
expressly directed to be taken in the County Court of the  
district in which either husband or wife resides (d).

In what dis-  
trict proceed-  
ings are to be  
taken.

In proceedings under section 9 of "The Married Women's  
Property Act, 1870," it is expressly provided by that section  
that either husband or wife may apply "*by summons or motion  
in a summary way*" to the Judge of the County Court of the  
district in which either party resides (e).

Mode of  
taking pro-  
ceedings.

Notwithstanding the provisions just referred to, it is believed  
that in practice it will be found that the most convenient mode  
of proceeding will be by plaint and summons. The practice in  
such a case may be ascertained from the Introductory Chapter  
to the present Book (f).

Practice.

## SECTION II. — PROCEEDINGS TO APPOINT A TRUSTEE OF A POLICY OF LIFE INSURANCE EFFECTED BY A HUSBAND FOR THE SEPARATE USE OF A MARRIED WOMAN.

The following important section of "The Married Women's  
Property Act, 1870," provides for the effecting by a married  
man of a policy of Life Insurance for his wife's benefit, and for  
the appointment in due course of a trustee of such policy :—

A married  
man may  
effect insur-  
ance for his  
wife's separate  
use.

"A married woman may effect a policy of insurance upon  
"her own life or the life of her husband for her separate use,  
"and the same and all benefit thereof, if expressed on the face  
"of it to be so effected, shall enure accordingly, and the con-  
"tract in such policy shall be as valid as if made with an un-  
"married woman.

*The Married  
Women's  
Property Act,  
1870, s. 10.*

"A policy of insurance effected by any married man on his own  
"life, and expressed upon the face of it to be for the benefit of his  
"wife or of his wife and children, or any of them, shall enure  
"and be deemed a trust for the benefit of his wife for her sepa-  
"rate use, and of his children, or any of them, according to  
"the interest so expressed, and shall not, so long as any object  
"of the trust remains, be subject to the control of the hus-  
"band or to his creditors, or form part of his estate. When  
"the sum secured by the policy becomes payable, or at any

(c) *Supra.*

(d) See sect. 9, *supra.*

(e) See sect. 9, *supra.*

(f) *Ante*, pp. 886 *et seq.*

“time previously, a trustee thereof may be appointed by the Court of Chancery in England or in Ireland according as the policy of insurance was effected in England or in Ireland, or in England by the judge of the County Court of the district, or in Ireland by the chairman of the Civil Bill Court of the division of the county, in which the insurance office is situated, and the receipt of such trustee shall be a good discharge to the office. If it shall be proved that the policy was effected and premiums paid by the husband with intent to defraud his creditors, they shall be entitled to receive out of the sum secured an amount equal to the premiums so paid.”—33 & 34 Vict. c. 93, s. 10.

Effect of  
above sec-  
tion.

It is to be noticed that the power conferred upon the County Court by the above section can only be exercised when the intended benefit to the wife or to the wife and children, or any of them, *is expressed upon the face of the policy of insurance.*

Parties to  
proceedings.

The section does not specify the persons who may apply under it for the appointment of a trustee. It is apprehended that an application may be made either by the woman benefited or by the insurance office.

In what dis-  
trict the pro-  
ceedings  
should be  
taken.  
Practice.

Proceedings under this section of the Act must be taken (it is to be noted) in the County Court of the district in which the office of the Insurance Company is situated.

No particular mode of proceeding is pointed out by the Act. It is apprehended, therefore, that the case falls within Order XL. of “The County Court Rules, 1875,” as being one not otherwise provided for by those rules, and that a petition is consequently the proper mode of proceeding (*f*). The practice on such a petition can be ascertained from the Introductory Chapter to the present Book of this work.

## BOOK V.—DIVISION IV.

### PROCEEDINGS UNDER STATUTES CONFERRING AN ADMINISTRATIVE JURISDICTION.

#### CHAPTER V.

##### PROCEEDINGS FOR THE MAINTENANCE OR ADVANCEMENT OF INFANTS.

THE jurisdiction which the County Court possesses as to the maintenance and advancement of infants can hardly be said to be derived under any special statute, since it is conferred by the "County Courts Equitable Jurisdiction Act," and is the subject of no other statutory provisions. At the same time the proceedings are so peculiar, and are so closely allied to the other administrative proceedings, which are treated of in the present Division of this Book, that the subject can be most conveniently considered in the present place.

Jurisdiction as to the maintenance and advancement of infants.

The jurisdiction of the old Court of Chancery over infants was exercised by it on behalf of and as representing the sovereign as *Parens Patrie*. It was not the creation of any statutory provisions. Moreover, such jurisdiction is never exercised save where there is some property belonging to the infant, "because the Court cannot take on itself the maintenance of "all the children in the kingdom; it can exercise the jurisdiction usefully and practically only where it has the means "of doing so, *i.e.*, by its having the means of applying property "for the use and maintenance of the infants" (*a*). But where there is property, "the jurisdiction as to maintenance is, with "respect to the income of the property, to take care of it for "the benefit of the children, to apply it for the benefit of the "children so far as it may be beneficial for them that it should "be so applied, and to accumulate any surplus" (*b*). The jurisdiction is not ousted by the fact of the infant being a lunatic (*c*).

Jurisdiction only exists where the infant possessed of property.

(*a*) *Wellesley v. Beaufort*, 2 Russ. 21; Simpson on Infants, 240, 241.

(*b*) *Per* Lord Redesdale in *Wellesley v. Wellesley*, 2 Bli. N. S. 133; Simpson on Infants, p. 241.

(*c*) *Volans v. Carr*, 2 De G. & S. 242

County Court may exercise jurisdiction as to advancement and maintenance of infants where the infant's property does not exceed £500.

28 & 29 Vict.  
c. 99, s. 1,  
sub-s. 6.

Partics.

In what district proceedings to be commenced.

The exercise of the jurisdiction above described is, by "The County Courts Act, 1865," entrusted to the County Court in cases where the infant's property does not exceed £500. The enactment on the subject provides that (*d*) :—

"The County Courts . . . shall have and exercise all the "power and authority of the High Court of Chancery in the "suits or matters hereafter mentioned ; that is to say :

\* \* \* \* \*

"(6.) In all proceedings relating to the maintenance or  
"advancement of infants in which the property  
"of the infant shall not exceed in amount or  
"value the sum of five hundred pounds."—28  
& 29 Vict. c. 99, s. 1, sub-s. 6 (*e*).

One or two remarks are required as to *parties* to proceedings for the maintenance and advancement of infants. Such proceedings may be instituted by the guardian of any infant in whose name any stock is standing (or any sum of money by virtue of any Act for paying off any stock), and who is beneficially entitled thereto (*f*). And even in cases where an infant is entitled under an instrument authorizing the application of the income of certain funds for his maintenance, and of part of the capital, for his advancement, the trustees and guardians may relieve themselves of all responsibility by obtaining the previous sanction of the Court for the payments which they propose to make (*g*).

With regard to the district in which proceedings for the maintenance and advancement of infants are to be taken, as there is no *special* provision on the subject, they must, it is presumed, like all other proceedings in any suit or matter under "The County Courts Act, 1865," which are not otherwise provided for, "*be taken or instituted in the County Court within*



arose (*l*). And, as was stated in a recent case, "the object of the statute (of 1865) was to bring justice home to the door of every man" (*l*).

Proceedings to obtain the maintenance and advancement of infants must be commenced by filing a petition (*m*). Proceedings should be by petition.

It is to be noticed, however, that, in the Schedule of Forms, appended to "The County Court Rules, 1875," there is a form of particulars of demand provided "*in an action for advancement of infants*" (*n*), from which one would be disposed to infer that the proceedings in question may sometimes be commenced by plaint. As, however, the rules contain no direction to this effect, and as, moreover, they expressly provide that, "subject to, and in accordance with the foregoing rules, all proceedings under the fifth and sixth clauses of the first section of 'The County Courts Act, 1865,' shall be commenced by filing a petition" (*o*), it would be imprudent to resort to any other mode of procedure than that by petition.

A form of petition by person interested in funds in Court is provided (*p*); and this form might, without much difficulty be adapted to a case where the maintenance or advancement of an infant is prayed.

The practice on the petition is the same as in other cases of proceedings by petition, and can be generally ascertained from the Introductory Chapter to the present Book (*q*). Practice.

The petition should always be supported by affidavit. No form is provided, but it is suggested that the one given in the foot-note, and which is taken from Daniell's Chancery Forms (1879 Ed.), p. 656, will serve as a guide to the practitioner (*r*). Affidavit in support of petition.

Let us now briefly consider under what circumstances the Under what

(*l*) *Per* James, V.-C., in *Baker v. Wait*, L. R. 9 Eq. 103, 105, 106.

(*m*) Ord. xxxi. r. 15. See cap. i. *ante*, p. 1061.

(*n*) App. II. Form No. 46, V.

(*o*) Ord. xxxi. r. 15, *ante*, p. 1061.

(*p*) App. II. Form No. 302.

(*q*) See *ante*, pp. 886 *et seq.*

(*r*) FORM OF AFFIDAVIT IN SUPPORT OF PETITION FOR ALLOWANCE FOR MAINTENANCE.

[Heading to correspond with Petition.]

1. [Show the age of the infant, the nature and amount of his fortune, what relations he has, where he is residing, and under whose care].

2. [Show that the fund proposed to be operated upon for maintenance is available for that purpose].

3. [Show that the sum sought to be allowed for maintenance is a proper amount; and set forth, in a schedule, a scheme for the application thereof, under the following or similar heads].

School bills	.	.	.	.	.	.	.	.	.
Clothing	.	.	.	.	.	.	.	.	.
Pocket money	.	.	.	.	.	.	.	.	.
Medical attendance	.	.	.	.	.	.	.	.	.
Maintenance, travelling, and incidental expenses in vacations	.	.	.	.	.	.	.	.	.

Total £

circumstances  
an order will  
be made at  
the hearing.

—For main-  
tenance.

—For ad-  
vancement.

Court will, at the hearing of the petition, make an order for maintenance or advancement.

*First*, as regards maintenance, the petition must satisfy the Court that there is an income applicable for the maintenance of the infant (*s*). And even though this is the case, maintenance will not be given if the father of the infant is living (*t*). Maintenance will, however, be allowed, without reference to the mother's ability, though she is a widow (*u*).

*Secondly*, with regard to advancement, the Court will not allow advancement, where there is no power in the instrument of gift, unless the advance is really required, and is to the infant's benefit (*x*).

If the father is alive, and is unable to advance a child, it may be done out of his own money (*y*). Moreover, the infant must, as a rule, be absolutely entitled to the fund out of which advancement is asked (*z*).

With regard to cases where there is a power of advancement conferred upon trustees, the Court will not, as a rule, control their discretion (*a*).

(*s*) See *ante*, p. 1093.

(*t*) *Falkner v. Watts*, 1 Atk. 408; Simpson on Infants, pp. 269, 270.

(*u*) *Douglas v. Andrews*, 12 Beav. 310.

(*x*) Simpson on Infants, pp. 298, 299.

(*y*) *Perry v. Perry*, 18 W. R. 482.

(*z*) Simpson on Infants, pp. 299, 300.

(*a*) *Ib.*, p. 301, and cases there cited.

## BOOK V.—DIVISION IV.

### PROCEEDINGS UNDER STATUTES CONFERRING AN ADMINISTRATIVE JURISDICTION.

#### CHAPTER VI.

##### JURISDICTION AND PROCEEDINGS UNDER “THE CHARITABLE TRUSTS ACT.”

THE administration of charitable trusts is now regulated by “The Charitable Trusts Act, 1853” (16 & 17 Vict. c. 137), as amended by “The Charitable Trusts Amendment Act, 1855” (18 & 19 Vict. c. 124).

The two Acts just named are construed together as one Act, it being provided by the last-named Act that :—

“‘The Charitable Trusts Act, 1853,’ herein-after called ‘The principal Act,’ and this Act, shall be construed together as one Act, and any provisions of the principal Act inconsistent with this Act are hereby repealed.”—18 & 19 Vict. c. 124, s. 1.

The following interpretation clauses are contained in the Acts :—

“In the construction of this Act, except where the context or other provisions of the Act may require a different construction, the expression ‘Court of Chancery’ shall mean and include the Master of the Rolls and every Judge of the Court of Chancery in England; the expression ‘Lord Chancellor’ shall mean and include the Lord Chancellor of Great Britain and the Lord Keeper and Commissioners of the Great Seal of Great Britain for the time being (*aa*); the expression ‘County Court’ shall mean and include every County Court holden or established or to be holden or established under the Act of the ninth and tenth years of Her

Administra-  
tion of chari-  
table trusts  
regulated by  
statute.

“The Chari-  
table Trusts  
Acts, 1853  
and 1855,”  
are construed  
together.

*The Chari-  
table Trusts  
Act, 1855,*  
s. 1.

Interpretation  
clauses.

*The Chari-  
table Trusts  
Act, 1853,*  
s. 66.

(*aa*) Certain expressions which were originally contained in this section have been repealed by 38 & 39 Vict. c. 66.

“ Majesty, chapter ninety-five, or any Act or Acts passed or to  
“ be passed for the alteration or extension of the same Act, and  
“ every Judge of any such Court ; the expression ‘ Charity ’  
“ shall mean every endowed foundation and institution taking  
“ or to take effect in England or Wales, and coming within the  
“ meaning, purview, or interpretation of the statute of the  
“ forty-third year of Queen Elizabeth, chapter four, or as to  
“ which, or the administration of the revenues or property  
“ whereof, the Court of Chancery has or may exercise jurisdic-  
“ tion ; the expression ‘ Trustee ’ of any charity shall mean and  
“ include every person and corporation seised or possessed of or  
“ entitled to any real or personal estate, or any interest therein,  
“ in trust for or for the benefit of such charity, or all or any of  
“ the objects or purposes thereof, and every member of any  
“ such corporation ; and the expression ‘ the Board ’ shall mean  
“ the said Charity Commissioners sitting as a board under this  
“ Act ; and the expression ‘ Endowment ’ shall mean and in-  
“ clude all lands and real estate whatsoever, of any tenure,  
“ and any charge thereon, or interest therein, and all stocks,  
“ funds, monies, securities, investments, and personal estate  
“ whatsoever, which shall for the time being belong to or  
“ be held in trust for any charity, or for all or any of the  
“ objects or purposes thereof ; and the expression ‘ land ’  
“ shall extend to and include manors, messuages, buildings,  
“ tenements, and hereditaments, corporeal and incorporeal,  
“ of every tenure and description.”—16 & 17 Vict. c. 137,  
s. 66.

“ In the construction of the principal Act and this Act the  
“ word ‘ Charity ’ shall include every institution in England or  
“ Wales endowed for charitable purposes, but shall not include  
“ any charity or institution expressly exempted from the opera-

“good behaviour; and the fourth, and every secretary and inspector to be appointed under this Act, shall hold office during the pleasure of Her Majesty.”—16 & 17 Vict. c. 137,

s. 1.

“The said commissioners to be appointed under this Act shall be styled ‘The Charity Commissioners for England and Wales,’ and may have and use a seal for authenticating documents, and such commissioners shall sit from time to time as a board for carrying this Act into execution; and any two of such commissioners may form a board, and may exercise all or any of the powers conferred on the commissioners or the board by this Act.”—16 & 17 Vict. c. 137,

s. 6.

“The said board shall, by general minutes, from time to time prescribe regulations for their proceedings, and the proceedings of their inspectors, and concerning the form and manner of applications to the said board, and the conditions to be performed by applicants, and for the guidance of applicants in relation thereto, and all such general minutes shall be signed by three of the said commissioners at the least; and copies of all such general minutes shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament be sitting, or if Parliament be not sitting, then within fourteen days after the next meeting thereof.”—16 & 17 Vict. c. 137, s. 7.

“The said board shall cause minutes of their proceedings, and all orders, certificates, and schemes, made or approved by them under this Act, to be entered in books to be provided and kept for such purpose, and all such entries shall be signed by their secretary (a), and all copies purporting to be extracted from the books of the said board, and to be certified by their secretary, of any such minutes, orders, certificates, and schemes entered as aforesaid, shall be received as evidence of the proceedings to which such minutes shall relate, and of such orders, certificates, or schemes, and of the making or approval thereof (as the case may require) by the said board, without further proof thereof.”—16 & 17 Vict. c. 137,

s. 8.

“Every act of the board may be sufficiently authenticated by the seal of the commissioners, and the signature of their secretary, or in his absence of the chief clerk.”—18 & 19 Vict. c. 124, s. 4.

“All orders, certificates, schemes, and other documents issued under the seal of the board shall be deemed and taken to be the originals, and copies thereof shall be entered in the books of the board, and all such entries may be sufficiently

Style of commissioners who may sit as a board.

*The Charitable Trusts Act, 1853,* s. 6.

Board to frame general rules.

*Id.*, s. 7.

Minutes of proceedings and orders, &c., to be entered, and copies of entries signed by the secretary to be received in evidence.

*Id.*, s. 8.

How the Acts of the Board may be authenticated.

*The Charitable Trusts Act, 1853,* s. 4.

Entries in and extracts

(a) The Secretary of the Board is, by virtue of his appointment, the treasurer of Public Charities, see sect. 47, *post*, p. 1100.

from the books have to be authenticated.

*The Charitable Trusts Act, 1855, s. 5.*

Deeds, &c., relating to charities may be enrolled at the office, and copies to be evidence.

*Id.*, s. 42.

Secretary to be treasurer of charities ; such treasurer to be a corporation.

*The Charitable Trusts Act, 1853, s. 47.*

Board to inquire into condition and management of charities.

*Id.*, s. 9.

“ certified by the signature of the secretary, or in his absence  
“ of the chief clerk : every order, certificate, scheme, and other  
“ document purporting to be sealed with the seal of the board  
“ shall be received in evidence without further proof ; and any  
“ writing purporting to be a copy extracted from the said  
“ books, and to be certified as aforesaid, shall be received in  
“ evidence in like manner.”—18 & 19 Vict. c. 124, s. 5.

“ Any deed, will, or document relating to any charity may  
“ be enrolled by the board in books to be provided and kept  
“ by them for that purpose at their office, and a copy of any  
“ such deed, will, or document made from such books, and  
“ certified under the hand of the secretary or one of the com-  
“ missioners, shall be received as evidence of the contents  
“ of the same deed, will, or document.”—18 & 19 Vict. c. 124,  
s. 42.

“ The secretary for the time being of the said board shall by  
“ virtue of his appointment be the treasurer of public charities ;  
“ and such treasurer shall, for the purposes of taking, holding,  
“ conveying, assigning, transferring, and transmitting real  
“ property, including leaseholds for lives or years, be a cor-  
“ poration sole by the name of ‘The Treasurer of Public  
“ Charities,’ and by that name shall have perpetual succession,  
“ and plead and be impleaded before all Courts, Justices, and  
“ others.”—16 & 17 Vict. c. 137, s. 47.

“ It shall be lawful for the said board from time to time, as  
“ they in their discretion may see fit, to examine and inquire  
“ into all or any charities in England or Wales, and the nature  
“ and objects, administration, management, and results thereof,  
“ and the value, condition, management, and application of the  
“ estates, funds, property, and income belonging thereto ; and  
“ the said board may cause examinations and inquiries in rela-

of rent-charges (*e*); to sanction building leases of charity lands, and the working of mines, doing repairs and improvements, and the application of the charity funds, or the raising of money on mortgage for those purposes (*f*); to authorise the sale or exchange of charity lands (*g*); to authorise and sanction legal proceedings concerning or relating to any charity (*h*); and to determine by arbitration disputes among members of charities, whether such charities be subject to the operation of the Act (*i*), or whether they be exempted therefrom (*k*).

Having thus sketched the constitution and powers of the Board of Charity Commissioners created under "The Charitable Trusts Acts," the jurisdiction which the same Acts confer upon the County Court will be more readily understood. Such jurisdiction is derived from the following enactments:—

"Where any charity of which the gross annual income for the time being does not exceed thirty pounds shall be established or administered or be applicable wholly or partially to or for objects or purposes within the district or any two or more of the districts of any County Court or Courts holden under the Act of the session holden in the ninth and tenth years of the reign of Her Majesty, chapter ninety-five, and the appointment or removal of any trustee, or any other relief, order, or direction whatsoever concerning such charity, shall be considered desirable, and such appointment or removal, or other relief, order, or direction, might now be made or given by the Court of Chancery in respect either of its ordinary or its special or statutory jurisdiction, or by the Lord Chancellor intrusted with the care and commitment of the custody of lunatics, it shall be lawful for any person authorized in this behalf by the order or certificate of the said board, or for the Attorney-General, to make application to such County Court, or, as the case may be, to any one of such County Courts, for such order, direction, or relief as the nature of the case may require; and such County Court shall entertain such application, and shall hear the matter in open Court, and shall give such relief, and make such orders and directions in relation to the matter of such application, as might now be made or given by the Court of Chancery or by the Lord Chancellor, intrusted as aforesaid, in a suit regularly instituted, or upon petition, as the case may require; and the clerk of such County Court shall transmit a copy of such order or direction to the office in London of the Registrar

Jurisdiction of County Courts with respect to charities.

County Courts to have jurisdiction in case of charities the incomes of which do not exceed £30.

*The Charitable Trusts Act*, 1853, s. 32.

(*e*) Sect. 25.

(*f*) Sect. 21. Sect. 26 provides that leases, sales, &c., authorised by board, are to be valid.

(*g*) Sect. 24.

(*h*) Sects. 17, 19, & 20, see *post*, pp. 1108—1109, where these sections are set out.

(*i*) Sect. 66 of "The Charitable Trusts Amendment Act, 1855."

(*k*) Sect. 64 of Principal Act.

“ of County Courts Judgments, to be there enrolled : Provided  
 “ always, that no Judge of any County Court shall be authorized  
 “ to vary any decree, order, or direction of the Court of  
 “ Chancery, or of any Judge thereof, or to make or give any  
 “ order or direction inconsistent or conflicting with any such  
 “ decree, order, or direction : Provided also, that where two or  
 “ more County Courts shall have concurrent jurisdiction with  
 “ respect to any charity under this Act, no application in  
 “ respect of such charity shall be made to or entertained by  
 “ more than one of such County Courts at the same time.”—  
 16 & 17 Vict. c. 137, s. 32.

No Chancery  
 Judge, or  
 District or  
 County Court,  
 in proceedings  
 under this Act,  
 to try titles,  
 &c.

*The Charitable Trusts  
 Act, 1853,*  
 s. 41.

Board may  
 direct cases  
 within the  
 jurisdiction  
 of a district  
 or County  
 Court to be  
 taken before  
 a Judge of  
 the Court  
 of Chancery

“ Provided always, that no Judge of the Court of Chancery,  
 “ nor any County Court, shall upon any proceedings under this  
 “ Act have jurisdiction to try or determine the title at law or  
 “ in equity to any real or personal property, or any term or  
 “ interest therein, as between any charity, or the trustee  
 “ thereof, and any person holding or claiming such real or  
 “ personal property, term, or interest adversely to such charity,  
 “ or to try or determine any question as to the existence or  
 “ extent of any charge or trust.”—16 & 17 Vict. c. 137, s. 41.

“ It shall be lawful for the said board to direct that any  
 “ application as to any charity within the jurisdiction of any  
 “ County Court shall be made before a Judge of the Court of  
 “ Chancery, or as to any charity within the jurisdiction of the  
 “ Court of Chancery of the County Palatine of Lancaster,  
 “ either before the Chancellor or the Vice-Chancellor of the  
 “ same County Palatine, or before a Judge of the High Court  
 “ of Chancery, according to the provisions herein contained  
 “ applicable to a charity the gross annual income whereof  
 “ exceeds thirty pounds, and in such case such application  
 “ shall be made and may be heard and determined accordingly,



“under the order of the board signed by two commissioners, or  
 “authenticated in such manner as the Lord Chancellor from  
 “time to time by any order under his hand direct; and no  
 “transfer to or by the official trustees shall be permitted by the  
 “Governor and Company of the Bank of England or any other  
 “company contrary to this provision.”—18 & 19 Vict. c. 124,  
 s. 25.

“Any Court or Judge having jurisdiction to order the  
 “transfer of stock in the public funds, or stock or shares of any  
 “public company, to the official trustees of charitable funds,  
 “shall have power also to authorise such trustees to call for a  
 “transfer of and to transfer such stock or shares, and may also  
 “order the payment to the same trustees of any principal  
 “monies of any charity, under the same circumstances in which  
 “the transfer of stock to them may now be ordered.”—18 &  
 19 Vict. c. 124, s. 12.

For the purpose of definitely settling whether the income of  
 a charity be or be not such as to bring it within the jurisdiction  
 of the County Court, “The Charitable Trusts Acts” con-  
 tain the following provision enabling the Board of Charity  
 Commissioners to declare the income; such provision is as  
 follows:—

“For the purposes of determining the jurisdiction under  
 “this Act with respect to any charity, or the right to appeal  
 “from the determination of a Judge of the Court of Chancery,  
 “it shall be lawful for the said board to declare, according to  
 “such judgment as they may be able to form upon the returns  
 “or statements before them in relation to any charity, whether  
 “the gross annual income for the time being of such charity  
 “does or does not exceed thirty pounds or one hundred pounds  
 “(as the case may require), and a statement in any certificate  
 “or order of the said board that according to such judgment  
 “as aforesaid the gross yearly income of any charity does or  
 “does not exceed thirty pounds or one hundred pounds shall  
 “be sufficient evidence of the amount of the gross annual  
 “income of such charity, for the purpose of determining such  
 “jurisdiction or right to appeal as aforesaid; and any certi-  
 “cate or order made by the said board under this Act,  
 “authorising any proceeding or application concerning any  
 “charity to be taken or made to any District Court of Bank-  
 “ruptcy or County Court or to the Court of Chancery or any  
 “Judge thereof, shall state that the gross annual income for  
 “the time being of such charity does not exceed thirty pounds,  
 “or does exceed thirty pounds (as the case may be): Provided  
 “always, that where any charity, or the trustees thereof, in  
 “addition to the principal endowment for its general objects  
 “and purposes, shall be possessed of or entitled to any other  
 “endowment for any particular or special object or purpose  
 “arising out of or in its nature or application connected with

Official trust-  
 tees of chari-  
 table funds  
 may be em-  
 powered to  
 call for trans-  
 fers to them  
 of stock.

*The Chari-  
 table Trusts  
 Act, 1855,*  
 s. 12.

How income  
 of charity  
 ascertained  
 for purposes  
 of County  
 Court juris-  
 diction.

Statement in  
 certificate of  
 board of the  
 amount of  
 income of any  
 charity to be  
 sufficient  
 evidence for  
 determining  
 the juris-  
 diction or  
 proceedings  
 under this  
 Act.

Proviso as to  
 particular  
 endowments.

“ the general objects or purposes of such charity, it shall be  
 “ lawful for the said board, having regard to the circumstances  
 “ of each such case, and to the object and extent of the pro-  
 “ posed application and litigation, to determine whether such  
 “ endowment for such particular or special object or purpose  
 “ should, for the purposes of jurisdiction and proceedings under  
 “ this Act, be considered and treated as forming part of the  
 “ general endowment of the charity, or as a separate or in-  
 “ dependent charity, and such board shall frame their certificate  
 “ or order accordingly.”—16 & 17 Vict. c. 137, s. 44.

In accordance with this section is the following order of  
 “ The Charitable Trusts Orders, 1853 ” :—

Effect of com-  
 missioners’  
 order or certi-  
 ficate or  
 Attorney-  
 General’s  
 statement.

“ XVIII. The order or certificate of the commissioners or  
 “ statement of the Attorney-General, as to the amount of the  
 “ annual income shall be conclusive in the Court ; and the  
 “ other statements contained in the certificate or order of the  
 “ commissioners, or the statement of the Attorney-General,  
 “ shall, unless disputed, be taken as true.”

Power to make rules and orders both as to practice and for the  
 regulation of fees is created by the following section of “ The  
 Charitable Trusts Act, 1853.”

Lord Chan-  
 cellor to make  
 orders for  
 regulating  
 proceedings  
 before district  
 and County  
 Courts.  
 Subject to  
 such orders,  
 Judges may  
 regulate pro-  
 ceedings.

“ The Lord Chancellor shall make such orders for regulating  
 “ proceedings by and before the Judges of District Courts of  
 “ Bankruptcy and County Courts under this Act, and for fixing  
 “ and determining the fees to be taken in respect of such pro-  
 “ ceedings, as he may see fit ; and, subject to such orders, such  
 “ Judges may regulate the proceedings before them respectively  
 “ so as to render them as summary and inexpensive as con-  
 “ veniently may be.”—16 & 17 Vict. c. 137, s. 45.

In pursuance of the above section “ The Charitable Trusts  
 Orders, 1853,” were framed which are now in force. The

“that the orders hereinafter mentioned shall be used in the County Courts for regulating proceedings by and before the Judges of the County Courts and for fixing and determining the fees to be taken in respect of such proceedings until further orders shall be made by me for the same purpose under ‘The Charitable Trusts Act, 1853.’

“CRANWORTH, C’.

“March 6th, 1854.”

The following orders of “The Charitable Trusts Orders, 1853,” regulate the fees payable in charitable trust cases:—

“XIII. Where the annual income of the charity exceeds ten pounds the Court fees shall be payable as in cases within the ordinary jurisdiction of the Court, without prejudice to the privilege of the Attorney-General as to costs, and the charitable funds may be made liable to the payment thereof, at the discretion of the Judge.

Fees where income of charity exceeds £10.

“XIV. Where the annual income of a charity does not exceed the sum of ten pounds, no fees of Court shall be payable out of the funds of the charity; nor shall any fees be paid by any party to the proceeding, unless the Judge shall, in his discretion, order any of the parties to the proceeding before him to pay such fees of Court as he shall think fit, without prejudice to the privilege of the Attorney-General as to costs.

Fees where income does not exceed £10.

“XV. Where more than one charity is joined in one application, one set of Court fees only shall be payable, such fees to be calculated on the aggregate amount of the incomes of the charities so joining.

Fees where several charities join.

“XVI. Where Court fees are payable, they shall be calculated according to the scale of fees applicable to proceedings for the recovery of tenements under the 9 & 10 Vict. c. 95, s. 122 (1), the annual income of the charity, like the annual rent of the tenement, being treated as the basis of calculation.”

Fees, how calculated.

To “The Charitable Trusts Orders, 1853,” is appended a schedule of forms. But it is provided, by Order XX., that “The forms contained in the schedule may be varied by the Court, according to the circumstances of each case.” And it is, moreover, provided by Order XXI., that, “The enactments, Secretary of State’s orders, practice and forms in force and used in the County Courts shall, subject to the foregoing orders, be adopted with reference to proceedings in matters of charitable trusts, so far as the same are applicable, *mutatis mutandis*.”

Forms.

Practice to continue, subject to these orders.

It was formerly provided that:—

“The jurisdiction conferred on the County Courts with respect to any charity should not be exercised by any deputy

Deputy sitting for County

(7) Repealed by 19 & 20 Vict. c. 108, s. 3, and see sect. 50 of that Act.

Court Judge  
not to exercise  
jurisdiction.

“ or other person who might for the time being be appointed to sit and shall be sitting for any such Judge ” (*m*).

But the section in question has been repealed by “ The County Courts Act, 1867 ” (30 & 31 Vict. c. 142), which enacts that the deputy of a County Court Judge shall have all the powers of his principal.

Record.

“ The Charitable Trusts Orders, 1853,” provide that :—

“ I. The clerk (*n*) of every County Court shall keep a book to be called ‘ The Charitable Trusts Book,’ in which all proceedings taken in that Court in matters of charitable trusts shall be recorded in the form in the schedule hereunto annexed (*nn*).

Parties to  
proceedings.

The following provisions are in force with regard to the parties to proceedings under “ The Charitable Trusts Acts.”

Applications  
may be made  
by Attorney-  
General or by  
trustees of the  
charity.

It is enacted by “ The Charitable Trusts Act, 1853,” that:—

“ Every application to any Judge or Court under the jurisdiction created or conferred by any of the provisions of this Act, may be made by Her Majesty’s Attorney-General, or, subject to the provisions aforesaid, by all or any one or more

(*m*) By 16 & 17 Vict. c. 137, s. 11.

(*n*) “ The County Courts Act, 1856 ” (19 & 20 Vict. c. 108), enacts that the Clerk of a County Court shall be called *the Registrar*, see sect. 8, *ante*, Book I. cap. ii. p. 74.

(*nn*) The following is the form given :—

#### “ FORM OF RECORD.

“ Ashley, Lady, Charity of. In the matter of.

“ No. 1.

“ On the            day of           , 18   , an order [certificate or statement, as the case may be], was produced by [state the party producing or transmitting it], and the same has been numbered 1 [or as the case may be, according to the priority of production to the clerk.]

“ On the            day of           , 18   , a summons [or other process as the case may be], was issued and directed to be served by post [or otherwise as

“ of the trustees or persons administering or claiming to administer, or interested in, the charity which shall be the subject of such application, or any two or more inhabitants of any parish or place within which the charity is administered or applicable ; and it shall be lawful for Her Majesty’s Attorney-General for the time being, acting *ex officio*, to make application by petition to the Court of Chancery with respect to any charity under the provisions of the Act passed in the fifty-second year of King George the Third, chapter one hundred and one, or under the provisions of any Act or Acts passed or to be passed authorizing the application to the same Court by petition according to the provisions of the said Act.”—16 & 17 Vict. c. 137, s. 43.

*The Charitable Trusts Act, 1853, s. 43.*

Attorney-General may petition under 52 Geo. III. c. 101.

“ The Charitable Orders, 1853,” provide that :—

“ II. When any person has obtained the required order or certificate from the charity commissioners, and he is desirous of taking proceedings in the County Court, he shall produce such order or certificate to the clerk, who shall retain and file the same in numerical order in his office, and the party producing such order or certificate shall be deemed the plaintiff in such proceedings : and the person served with a *summons* under Order IV. (o), shall be deemed the defendant.

Proceedings by private persons.

“ III. When the Attorney-General shall propose to take proceedings in the County Court, he shall cause to be delivered or transmitted to the clerk a written statement, showing the nature and object of the proposed proceedings, and the clerk shall retain and file such statement in numerical order in his office, and the Attorney-General shall in such proceedings be deemed the plaintiff ; and the person served with a *summons* under Order IV. (p) shall be deemed the defendant.”

Proceedings by Attorney-General.

“ The Charitable Trusts Act, 1853,” provides that before any proceedings are taken under it, certain preliminary notices shall be (in most cases) given ; the following are the provisions on this subject :—

Notices before the commencement of proceedings.

“ Before any suit, petition, or other proceeding (not being an application in any suit or matter actually pending) for obtaining any relief, order, or direction concerning or relating to any charity, or the estate, funds, property, or income thereof, shall be commenced, presented, or taken, by any person whomsoever, there shall be transmitted by such person to the said board, notice in writing of such proposed suit, petition, or proceeding, and such statement, information, and particulars as may be requisite or proper, or may be required from time to time, by the said Board, for explaining the nature and objects thereof ; and the said board, if upon consideration of the circumstances they so think fit, may, by an order or certificate signed by their secretary, authorize or direct any suit, petition, or other proceeding to be com-

Notice of legal proceedings as to any charity by any person except the Attorney-General to be given to the Board.

*The Charitable Trusts Act, 1853, s. 17.*

(o) See *post*, p. 1110.

(p) *Ante*, p. 1110.

Courts not  
to entertain  
proceedings  
as to charities  
except upon  
certificate of  
the Board.

Saving for  
the Attorney-  
General acting  
*ex officio*.

*The Charitable Trusts*  
Act, 1853,  
s. 18.

“menced, presented, or taken with respect to such charity,  
“either for the objects and in the manner specified or men-  
“tioned in such notice, or for such other objects, and in such  
“manner and form, and subject to such stipulations or provi-  
“sions for securing the charity against liability to any costs or  
“expenses, and to such other stipulations or provisions for the  
“protection or benefit of the charity, as the said board may  
“think proper; and such board, if it seem proper to them,  
“may by such order or certificate as aforesaid require and  
“direct that any proceeding so authorized by them in respect  
“of any charity, shall be delayed during such period as shall  
“seem proper to and shall be directed by such board; and  
“every such order or certificate may be in such form and may  
“contain such statements and particulars as such board shall  
“think fit; and (save as herein otherwise provided) no suit,  
“petition, or other proceeding for obtaining any such relief,  
“order, or direction as last aforesaid shall be entertained or  
“proceeded with by the Court of Chancery, or by any Court or  
“Judge, except upon and in conformity with an order or certi-  
“ficate of the said board: Provided always, that this enact-  
“ment shall not extend to or affect any such petition or  
“proceeding in which any person shall claim any property or  
“seek any relief adversely to any charity.”—16 & 17 Vict.  
c. 137, s. 17.

“Provided always, that it shall be lawful for Her Majesty’s  
“Attorney-General acting *ex officio* to make such applications,  
“and take and prosecute such proceedings with respect to any  
“charity, in the Court of Chancery or otherwise as to him may  
“seem fit, as if this Act had not been passed; and that nothing  
“in this Act contained shall be construed as dispensing with  
“the fiat or allowance of Her Majesty’s Attorney-General, with

"notice to them as aforesaid, may, where local inquiry appears  
 "to them to be requisite, cause such inquiry to be made by one  
 "of their inspectors; and the said board may, in any case  
 "where they see fit, before acting upon the report of any in-  
 "specter, cause such report to be deposited for local inspec-  
 "tion, and give notice of the same being so deposited, and  
 "consider any statements or objections which may be trans-  
 "mitted to them in relation thereto."—16 & 17 Vict.  
 c. 137, s. 19.

"In any case in which it shall appear to the said board that  
 "the institution of legal proceedings is requisite or desirable  
 "with respect to any charity, or the estates, funds, property,  
 "or affairs thereof, and that under the circumstances thereof it  
 "is desirable that such proceedings should be instituted by the  
 "Attorney-General, it shall be lawful for the said board, if they  
 "so think fit, to certify such case, in writing under the hand  
 "of the secretary of the said board, to Her Majesty's Attorney-  
 "General, together with such statements and particulars (if  
 "any) as in the opinion of the said board may be requisite or  
 "proper for the explanation of such case; and thereupon the  
 "said Attorney-General, if upon consideration of the circum-  
 "stances he think fit, shall institute and prosecute such legal  
 "proceedings as he shall consider requisite or proper under the  
 "circumstances of such case, by information or petition in the  
 "Court of Chancery, or by application to a Judge thereof at  
 "chambers, or to a County Court under the jurisdiction given  
 "by this Act."—16 & 17 Vict. c. 137, s. 20.

"Before any application shall be made to any Judge of the  
 "Court of Chancery, or to any County Court, under any of the  
 "provisions herein contained for the establishment or alteration  
 "of a scheme or the appointment or removal of any trustees  
 "or trustee, notice in writing of such intended application  
 "shall be given in such form and manner as the said board  
 "shall have directed; and if the order be that such notice be  
 "affixed to or near the door of any parish or district church,  
 "the incumbent and churchwardens of such parish or district  
 "are hereby respectively required to allow such notice to be  
 "affixed and to remain so affixed during such period, not less  
 "than fifteen days, as the said board shall have ordered; and  
 "in any case in which the order shall be that such notice shall  
 "be affixed to any place, evidence that the same has been so  
 "affixed shall be deemed and taken as *prima facie* evidence that  
 "it has remained affixed during the period prescribed by the  
 "board."—16 & 17 Vict. c. 137, s. 42.

"The Charitable Trusts Act, 1853," as we have already  
 seen (*p*), gives jurisdiction to the County Court or County  
 Courts, within the district or districts of which any charity  
 may be established or administered or may be applicable wholly

Act, 1853,  
s. 19.

Power to  
board to cer-  
tify certain  
cases to the  
Attorney-  
General.

*The Chari-  
table Trusts  
Act, 1853,*  
s. 20.

Notice to be  
published of  
application  
for schemes  
or appoint-  
ment or  
removal of  
trustees under  
this Act.

*The Chari-  
table Trusts  
Act, 1853,*  
s. 42.

In what  
County Court  
proceedings  
to be insti-  
tuted.

or partially, to or for objects or purposes(*q*). And it also enacts that :—

Where two or more Courts have concurrent jurisdiction, Board to direct to which Court applications shall be made.

*The Charitable Trusts Act, 1853, s. 34.*

Commencement of proceedings.  
Issue of summons.

Notice to parties to attend the proceedings.

“Where two or more district Courts of Bankruptcy or County Courts shall concurrently have jurisdiction under this Act with respect to any charity, it shall be lawful for the said board to order to which of such Courts any application with respect to such charity shall be made ; and every such order shall be conclusive as to the jurisdiction with respect to the application referred to in such order.”—16 & 17 Vict. c. 137, s. 34.

Proceedings under “The Charitable Trusts Acts” are taken by way of plaint and summons.

With regard to the issue of the summons, the orders made under the Act direct as follows :—

“IV. Upon the production of any order, certificate or statement hereinbefore mentioned, the clerk shall at the instance of the plaintiff prepare a summons thereon, in the form set forth in the schedule hereunto annexed (*r*), in which shall be stated the substance of the order, certificate, or statement, and he shall make as many copies thereof as there are parties required by the plaintiff, in writing, to be summoned, and two additional copies, the one to be filed in the clerk’s office (*s*), and the other to be transmitted to the Charity Commissioners.”

The person taking the proceedings may, in addition to the summons, also obtain the issue of a notice to attend the proceedings to parties when he may desire. This is provided for by the following rule :—

“V. The clerk, if required by the plaintiff, shall prepare a notice to attend proceedings in the form set forth in the said

*schedule, to be served on any persons indicated by the plaintiff.*



"thereof as there are persons to whom such notice is to be given, and two additional copies, one to be filed in his office, and the other to be transmitted to the Charity Commissioners" (t).

The service of the summons, and of any notice to attend proceedings which may be issued, is thus provided for:—

Service of  
summonses  
and of notices  
to attend  
proceedings.

"VI. The clerk (u) shall forthwith transmit by pre-paid post letter a copy of the summons to each of the parties required to appear, and a copy of the notice to attend proceedings to each of the persons indicated by the plaintiff, and such transmission shall be sufficient service, unless the Judge shall in any case otherwise direct.

"VII. Where the plaintiff does not require any summons or notice to attend proceedings to be issued, the clerk shall prepare a notice of hearing, in the form set forth in the said schedule (x), and two additional copies thereof, one to be filed in his office, and the other to be transmitted to the Charity Commissioners, and shall either deliver such notice to the plaintiff or cause it to be served on him by pre-paid post letter, unless the Judge shall in any case otherwise direct.

Notice of  
hearing.

"VIII. In all cases it shall be competent for the clerk, if required by the plaintiff, to *summon* some persons, and to serve others with either or both of the said *notices*; or to

Summons and  
notices to be  
issued in  
certain cases.

(t) The following is the form provided:—

"NOTICE TO ATTEND PROCEEDINGS.

"In the County Court of , holden at  
" (Seal.)

"In the matter of [*title of charity*].

"No. of charity.

"[*Name, description, and address of party to whom notice is to be given.*]  
"Take notice, that the hearing of an application in the matter of the above charity by which it is suggested [*here state substance of order, certificate, or statement*], will take place on the day of , 18 , at the above County Court.

"The object of this notice is, that if you are desirous of attending the said hearing, you are at liberty to do so, and you may be heard in support of any objection you have to such proceedings in respect of the above charity.

"But if you do not attend at the hearing, you will not be subject to any costs or penalty in respect of such non-attendance.

"A. B., Clerk of the Court.

"Dated this day of , 18 ."

(u) *I.e.*, the Registrar now, see *ante*, p. 74.

(x) The following is the Form which is provided in the schedule:—

"NOTICE OF HEARING.

"In the County Court of , holden at  
" (Seal.)

"In the matter of [*title of charity*].

"No. of charity.

"[*Name, description, and address of party to whom notice is to be given.*]  
"Take notice, that the hearing of the application in the matter of the above charity is appointed to take place at this Court on the day of , 18 .

"A. B., Clerk of the Court.

"Dated this day of , 18 ."

\* *This should be at the earliest convenient sitting of the Court.*

- “serve a *notice of hearing* on the plaintiff and a *notice to attend proceedings* on any other person.
- Judge's power. “IX. In all cases it shall be competent for the Judge to direct in any case what persons, or additional persons, shall be served with a *summons* or *notice to attend proceedings* or *notice of hearing*.”
- Hearing. As regards the hearing of the case, the following provisions are in force :—
- “The Charitable Trusts Orders, 1853,” provide that :—
- Who may appear at the hearing. “XVII. At the hearing, any person who has been summoned, or has received notice to attend proceedings, or who is authorized to apply under section 43 of ‘The Charitable Trusts Act, 1853,’ may appear, and shall be heard to oppose the application authorized by the order or certificate of the commissioners, or the statement of the Attorney-General, subject to the payment of such costs as the Judge shall direct.
- Judge's note in ordinary cases. “X. Upon the requisition of the Charity Commissioners, a copy of the Judge's note of the evidence taken at the hearing, or such part thereof as may be required by the commissioners, shall be transmitted under the seal of the Court by the Judge to them at their office by post or otherwise.
- Judge's note where Attorney-General proceeds. “XI. Upon the requisition of the Attorney-General in proceedings instituted by him a copy of the Judge's note of the evidence taken at the hearing, or such part thereof as may be required by the Attorney-General, shall be transmitted under the seal of the Court to him by post or otherwise.”
- Forms of order at the hearing. The orders which may be made at the hearing are of course extremely various. Forms of these are provided by the appendix to the rules under the Act, and are set out in the foot-note below (y).

The following rule provides for the transmission of the proceedings to the Board of Charity Commissioners:—

Transmission  
of proceedings  
to the Charity  
Commissioners.

“XII. A copy of the summons, notice to attend proceedings, notice to appear, together with a copy of the order made by the Court, shall in all cases be transmitted by the

“to [here state the substance of the application authorised by the order or certificate] and upon hearing the matter of the said application.

“It is ordered, that [names, descriptions, and addresses, where they are personal representatives, insert the executors (or administrators) of (name, description, and address) deceased], do transfer £ bank £3 per centum annuities, or reduced annuities [or £3 5s. per centum annuities, or bank stock, promissory note, bill of exchange, bond, debenture or other security, as the case may be], standing in the name [or names] [insert the names, descriptions, and addresses of the persons in whose names the stock is standing] into the names of [names of official trustees].”

“[Where securities are to be deposited, vary the preceding order, commencing with the words, ‘do transfer,’ and substitute the following: ‘do deposit the following exchequer bills, dated, that is to say, No. 1,836 for 500l., No. 772 for 50l., &c., or any other exchequer bills for which the same may be exchanged (as the case may be), with (names of official trustees)].’

“Given under the seal of the Court, this day of , 18 .

“By the Court,

“A. B., Clerk of the Court.”

#### “FORM OF ORDER UNDER SECTION 48.

“In the County Court of , holden at .  
“ (Seal.)

“In the matter of [title of charity].

“No. of charity.

“Upon the application of [name, description, and address of applicant], to [here state the substance of the application authorized by the order or certificate], and upon hearing the matter of such application.

“It is ordered that the [here describe the estates of the charity as described or indicated in the order or certificate], holden in trust for the above mentioned charity, do vest in ‘the treasurer of public charities’ and his successors in trust for the said charity.

“[Where any periodical or other payment is directed with respect to any copyhold land add as to a periodical payment the following clause:] And it is further ordered, with the consent of the [name, description, and address of the lord of the manor wherein the estates are situated], that the sum of £ be paid by [name, description, and address of person ordered to pay], to the said lord of the manor of , on the day of next, and on the same day in each succeeding year [as the case may be], in compensation for fines or other profits which would have become due upon the death or admittance of the tenants of such land, being part of the said manor holden upon trust for the said charity.

“Given under the seal of the Court, this day of , 18 .

“By the Court,

“A. B., Clerk of the Court.”

#### “FORM OF ORDER FOR THE REMOVAL OR APPOINTMENT OF A TRUSTEE, “OR REMOVAL AND APPOINTMENT OF A TRUSTEE; VESTING THE “ESTATES OF A CHARITY IN A TRUSTEE; AND APPROVING A SCHEME.

“In the County Court of , holden at .  
“ (Seal.)

“In the matter of [title of charity].

“No. of charity.

“Upon the application of [name, description, and address of applicant], to [here state the substance of the application authorized by the order or certificate, but in the case of a scheme, only refer to it as ‘a certain scheme for

“ clerk, forthwith after the hearing, by post or otherwise, as the Judge shall direct, to the office of the commissioners.”

No order of a County Court, for the appointment or removal of trustees or approval of any scheme for the regulation of a charity, is valid, unless confirmed by the board.

No order of District or County Court for the appointment or removal of trustees or approval of a scheme to be valid unless confirmed by board.

*The Charitable Trusts Act, 1853, s. 36.*

“ Whenever any order or decision is made by any District Court of Bankruptcy or County Court for the appointment or removal of any trustee of any charity, or approving of any scheme for regulating or directing the administration of any charity, or the estate, funds, property, or income thereof, a copy of every such order or decision shall immediately upon the making thereof be delivered or transmitted by the deputy registrar of such District Court or by the clerk of the County Court, as the case may be, together with all requisite particulars, to the said board, for the purpose of being considered by them ; and no such order or decision shall be valid or effectual until the same shall have been approved by the said board, such approval to be testified by a certificate in writing, signed by the secretary of the said board, and no such approval shall issue from the said board until one calendar month shall have elapsed after the receipt by the board of such copy and particulars.”—16 & 17 Vict. c. 137, s. 36.

The following section of “The Charitable Trusts Act, 1853,” gives the board power to direct a rehearing in these cases :—

Board, if dissatisfied with the order of District or County Court, may remit the

“ In case any such order or decision as last aforesaid of any County Court shall not be approved by the said board, it shall be lawful for such board to remit the same for reconsideration and decision by such District or County Court, with such remarks and recommendations thereon (if any) as

"shall seem fit and expedient to such board, or, in the discretion of the board, to order and direct that the subject-matter to which such order or decision relates, together with such order or decision, shall be submitted to the consideration and decision of a Judge of the Court of Chancery, and in such last-mentioned case no further proceedings shall be had or taken in the District or County Court with respect to the matter in question ; and in case the order or decision of the District or County Court, on the reconsideration of any order or decision so remitted for reconsideration, be disapproved as aforesaid by the said board, such board shall refer such orders and decisions, and the subject-matter thereof, to a Judge of the Court of Chancery, or, as to any charity within the jurisdiction of the Court of Chancery of the County Palatine of Lancaster, either to the Chancellor or the Vice-Chancellor of the same county palatine, or to a Judge of the High Court of Chancery ; and where any order or decision is referred to a Judge of the Court of Chancery, or of the Court of Chancery of the said County Palatine of Lancaster, under this provision, such Judge shall have and exercise all such jurisdiction, power, and authority in relation thereto as in the case of a charity the gross annual income whereof exceeds thirty pounds, and may make such order in relation to the matter of such order or decision as to him may seem proper."

—16 & 17 Vict. c. 137, s. 37.

case for reconsideration, or may transfer the matter to a Judge of the Court of Chancery.

*The Charitable Trusts Act, 1853,*  
s. 37.

With regard to appeals from the County Court, "The Charitable Trusts Act, 1853," enacts that :—

"Where any person authorised to make any application under this Act (other than Her Majesty's Attorney-General acting *ex officio*), or any other person who may have been made a party to any proceeding upon any application under this Act, is aggrieved by or dissatisfied with any order made by any County Court upon any such application, or any proceeding thereon, he may, within one calendar month after the making of such order, give notice in writing to the said Court, and also to the said board, that he is desirous to appeal against the same (z) ; and if the said board think it reasonable and proper that such appeal should be entertained, and give a certificate to that effect, such District or County Court shall suspend any pro-

Appeal.

*The Charitable Trusts Act, 1853,*  
s. 39.

(c) The following Form of Notice is provided :—

"NOTICE OF APPEAL.

"In the matter of [*name of charity*].  
"I [*name, description, and address of the appellant*], do hereby give notice, that I am aggrieved by [*or dissatisfied with*] a certain order made by the County Court of \_\_\_\_\_, holden at \_\_\_\_\_, and dated the \_\_\_\_\_ day of \_\_\_\_\_, and that I intend to appeal against the same, and the grounds of appeal are that [*here state grounds*].

"(Signed) [*Appellant's name.*]  
\_\_\_\_\_, holden at \_\_\_\_\_, dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_."

"To the clerk of the County Court of \_\_\_\_\_,  
day of \_\_\_\_\_, 18 \_\_\_\_."

“ceedings upon the order appealed against during such time as  
“the circumstances may require ; and the said board, if they  
“so think fit, may require the person giving any such notice of  
“appeal to become bound with two sufficient sureties, to be  
“approved by the deputy registrar of such District Court, or  
“by the clerk of the County Court, as the case may be, to the  
“treasurers of the said Courts respectively, or such other per-  
“son as the said board may see fit, in such sum as to the said  
“board shall seem reasonable, to pay such costs of the pro-  
“ceedings on the appeal as shall be ordered to be paid by such  
“appellant, and also (if the said board so think fit) to indem-  
“nify the charity against the costs and expenses of or attending  
“such appeal ; and every bond executed under this provision  
“shall be exempt from stamp duty : Provided always, that it  
“shall be lawful for Her Majesty’s Attorney-General (acting  
“*ex officio*), at any time within three calendar months after the  
“making of any order by a District Court or County Court  
“under this Act, to lodge and commence and prosecute an ap-  
“peal against such order, without giving any such notice or  
“becoming bound as aforesaid, and every such last-mentioned  
“appeal shall thereupon be allowed by the order of such Dis-  
“trict or County Court, and shall have such other effect as any  
“other appeal under this Act.”—16 & 17 Vict. c. 137, s. 39.

“The Charitable Trusts Orders, 1853,” provide that :—

(*Sic.*)

“XIX. Where any person is desirous of appealing against  
“an order made by the Court in any matter of a charity, he  
“shall, within one calendar month after making such order,  
“give notice in writing, stating the grounds of such intended  
“appeal to the Court ; and such notice may be served, by post  
“or otherwise, on the clerk of the said Court (*a*) at his  
“office.”

The security required by the Act having been duly given, the subsequent proceedings on the appeal are regulated by the following enactment :—

Subsequent  
proceedings  
on the appeal.

*The Charitable Trusts  
Act, 1853,  
s. 40.*

“Where any order allowing an appeal has been made as aforesaid, the person thereby allowed to appeal shall within three calendar months present a petition to the Court of Chancery, setting forth the order appealed against, and the order allowing such appeal, and praying such relief as the case may require; and upon the hearing of such petition the Court may confirm, vary, or reverse the order appealed against, or may remit such order to the County Court by which the same was made, with or without any declaration or directions of the Court of Chancery in relation thereto, or may proceed in relation to the charity to which such order relates as in the case of an application under this Act to a Judge of the Court of Chancery at Chambers, and any Judge of such Court sitting at Chambers or in open Court may make or give any such orders or directions in relation to the matter of such order as he may see fit, or the Court may make such other order in relation to the matter of any such appeal as to the Court may seem just, and as might be made in the case of a suit regularly instituted, or a petition, as the case may require; and in case the party allowed to appeal do

“[*names, description, and addresses of obligee*] in £ of good and lawful money of Great Britain, to be paid the said [*name of obligee*] or his certain attorney, executors, administrators, or assigns. For which payment to be made, we bind ourselves and each [and every] of us, in the whole, our, and each of our heirs, executors, and administrators, jointly and severally, by these presents.

“Sealed with our seals, and dated this            day of            one thousand eight hundred and           

“Whereas an order, dated the            day of           , 18           , was made in the matter of [*name*] charity by the County Court of           , holden at           , and [*name, description, and address of appellant,*] states himself to be aggrieved by [*or dissatisfied with*] the said order, and has given notice of appeal pursuant to the Charitable Trusts Act, 1853, and the practice of the Court: And whereas the Charity Commissioners of England and Wales have required that the said [*appellant*] should, together with two sufficient sureties, become bound to [*person whom the commissioners direct to be obligee*] in the sum of £            to pay such costs of the proceedings on the appeal as shall be ordered to be paid by the said appellant [*if required by the commissioners*], and also to indemnify the charity against the costs and expenses of and attending such appeal].

“And whereas the above-named [*names, descriptions, and addresses of sureties*], at the request of the said [*name of appellant*], have agreed to enter into the above-written obligation for the purpose aforesaid, and the security intended to be given has been approved of by [*name of clerk*].

“Now the condition of this obligation is such, that if the above-bounded [*names*], and any or either of them, shall pay unto the said [*name of the obligee*], his executors, administrators, or assigns, the costs of the said appeal, as the said Court of Appeal shall order, then this obligation shall be void, otherwise to remain in full force and virtue.

I approve of  
this bond.  
(L. S.) J. K.

“A. B. (L. S.)  
“C. D. (L. S.)  
“E. F. (L. S.)

“Signed, sealed, and delivered by the above-bounded  
“presence of.”

in the

“not within such three calendar months present such petition of appeal, the order against which such appeal was allowed shall be final; and in case any costs adjudged on any such appeal to be paid by the party allowed to appeal be not paid, such bond as aforesaid may be put in suit, and the money to be recovered on every such bond shall be applied to indemnify the charity estate or the person damnified, or otherwise in such manner as the justice of the case may require, and the Court or Judge by whom such appeal may have been heard shall think fit.”—16 & 17 Vict. c. 137, s. 40.

The following enactment contains several directions as to the enforcement of orders made under the Act:—

“Subject to any orders to be made by the Lord Chancellor as hereinafter mentioned, and to the other provisions of this Act, all proceedings to be taken in any District Court of Bankruptcy or County Court, and all orders and directions to be made or given by any such District Court or County Court by virtue of the jurisdiction hereby created and conferred on such Court, shall respectively be subject to the same rules and regulations, and have the same effect, and be registered, enforced, and executed in the same manner, as the other proceedings, orders, judgments, and directions of the same Court under its ordinary jurisdiction, and it shall be lawful for any such District Court, or for any County Court, with the consent of the board, to rescind or vary any order which shall have been previously made by such Court, without prejudice to any act or matter in the meantime done under such order; and for executing and putting in force any order to be made by any County Court under this Act, every Judge of any such Court shall and may have and exercise all such powers as by the Act of the session holden in the ninth and

How orders  
of County  
Court under  
this Act to  
be enforced.

*The Charitable Trusts  
Act, 1853,  
s. 38.*



## BOOK V.—DIVISION IV.

### PROCEEDINGS UNDER STATUTES CONFERRING AN ADMINISTRATIVE JURISDICTION.

#### CHAPTER VII.

##### JURISDICTION AND PROCEEDINGS AS TO THE WINDING-UP OF COMPANIES AND SOCIETIES.

THE winding-up of public companies and societies is regulated by two Acts of Parliament—the one Act being “The Companies Act, 1862” (25 & 26 Vict. c. 89); and the other being “The Companies Act (1862) Amendment Act” (30 & 31 Vict. c. 131). There also are in force certain rules made under these Acts. The last-named of the two Acts provides:—

“This Act may be cited for all purposes as ‘The Companies Act, 1867.’”—30 & 31 Vict. c. 131, s. 1.

“‘The Companies Act, 1862,’ is hereinafter referred to as ‘the principal Act;’ and the principal Act and this Act are hereinafter distinguished as and may be cited for all purposes as ‘The Companies Acts, 1862 and 1867;’ and this Act shall, so far as is consistent with the tenor thereof, be construed as one with the principal Act; and the expression ‘this Act’ in the principal Act, and any expression referring to the principal Act which occurs in any Act or other document, shall be construed to mean the principal Act as amended by this Act.”—30 & 31 Vict. c. 131, s. 2.

As regards the interpretation of “The Companies Act,” it is sufficient to set out the following enactment:—

“The term ‘contributory’ shall mean every person liable to contribute to the assets of a company under this Act, in the event of the same being wound up: It shall also, in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory.”—25 & 26 Vict. c. 89, s. 74.

Under “The Companies Acts, 1862 and 1867,” there exist three different modes of winding-up, viz., (1.) Compulsory

Jurisdiction and practice in winding-up matters regulated by statute.

Short titles.

*The Companies Act, 1867, s. 1.*

*The Companies Acts, 1862 and 1867, s. 2.*

Meaning of the term “contributory.”

*The Companies Act, 1862, s. 74.*

“The Companies Acts”

provide for  
three different  
modes of  
winding-up  
under Court.

And give the  
County Court  
a derivative  
jurisdiction  
and an  
auxiliary  
jurisdiction.  
Division of  
the subject.

windings-up; (2.) Voluntary windings-up; and (3.) Windings-up under the supervision of the Court.

Moreover, the Acts confer on the County Court a derivative jurisdiction over cases transferred to it from the High Court, and an auxiliary jurisdiction to aid the High Court by taking evidence in cases pending there.

The most convenient division of the subject will be to consider (I.) The General Jurisdiction and Constitution of the County Court in Winding-up Matters; (II.) The Jurisdiction and Proceedings on a Compulsory Winding-up; (III.) The Jurisdiction and Proceedings upon a Voluntary Winding-up; (IV.) The Jurisdiction and Proceedings in a Winding-up under the Supervision of the Court; (V.) The Jurisdiction and Proceedings in Winding-up Matters transferred from the High Court; and (VI.) The Jurisdiction and Proceedings as to taking evidence in the County Court in Winding-up Cases pending in the High Court.

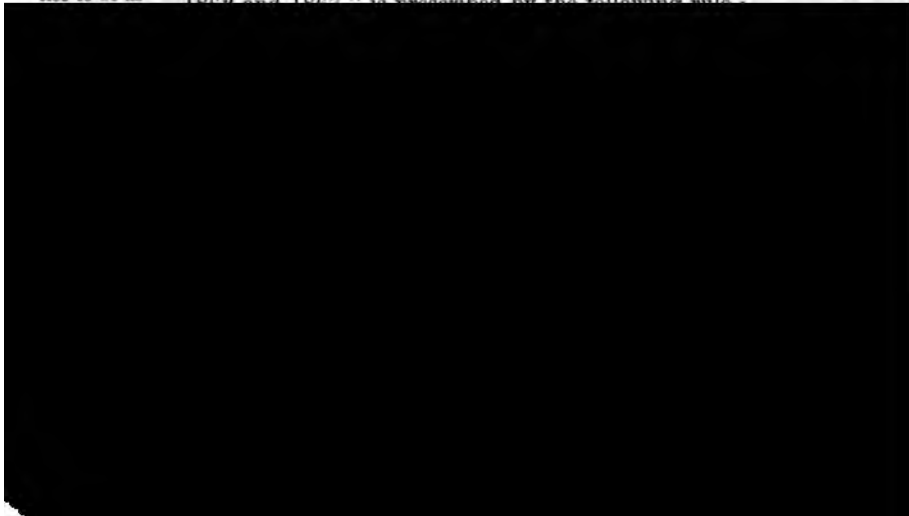
#### SECTION I.—THE GENERAL JURISDICTION AND CONSTITUTION OF COUNTY COURTS FOR WINDING-UP PURPOSES.

(1.) General  
winding-up  
jurisdiction  
of the County  
Court.

By "The Building Societies Act, 1874" (*a*), and "The Industrial and Provident Societies Act, 1876" (*b*), the County Court is, as we have already seen, constituted the tribunal for the winding-up of societies formed under these Acts. It also exercises a winding-up jurisdiction in matters transferred to it by the High Court (*c*).

(2.) General  
rules of prac-  
tice to be as

The general practice of the County Court in proceedings under the above statutes, and under "The Companies Acts, 1862 and 1867" is prescribed by the following rules.



“lieu of the Bank of England.”—“The County Court Rules, 1875,” Order XXXIX.

The practice of the Chancery Division of the High Court in proceedings under the winding-up Act, is regulated by a set of rules dated 11th November, 1862. There is no short title given to these rules, but for convenience they will be cited throughout this chapter as “Rules under Companies Act, 1862.”

The rules just mentioned contain a general direction that in winding-up cases the general practice of the Chancery Division shall govern all matters as to which no special provision is made by such rules themselves. The rule referred to is as follows :—

“The general practice of the Court, including the course of proceeding and practice at the Judges’ Chambers, as provided by the statute 15th and 16th Victoria, chapter 80, and the General Orders of the Court relative thereto, shall, in cases not provided for by ‘The Companies Act, 1862,’ or these rules, and so far as the same are applicable, and not inconsistent with the said Act, or these rules, apply to all proceedings for winding-up a company.”—“Rules under Companies Act, 1862,” r. 74.

“The Rules under Companies Act, 1862,” contain the following general provisions dealing with the application of the said rules, their commencement and interpretation, which it is convenient to set out in this place :—

“These rules apply only to proceedings under ‘The Companies Act, 1862.’”—“Rules under Companies Act, 1862,” r. 75.

“These rules shall take effect and come into operation on and after the 25th day of November, 1862.”—“Rules under Companies Act, 1862,” r. 76.

“The 1st rule of the 23rd of the Consolidated General Orders, and the General Interpretation Clause therein, shall be deemed to extend and apply to the rules of this Order ; and such rules shall have the effect of, and be deemed to be General Orders of the Court.”—“Rules under Companies Act, 1862,” r. 77.

“The power of the Court, and of the Judge sitting in Chambers, to enlarge or abridge the time for doing any act, or taking any proceeding, to adjourn, or review any proceeding and to give any direction as to the course of proceeding, is unaffected by these rules.”—“Rules under Companies Act, 1862,” r. 78.

Fees for the remuneration of the officers of the County Court for the discharge of duties under the Act are authorized by the following section :—

“The registrars and high bailiffs of the County Courts shall be remunerated for the duties to be performed by them under this Act, by receiving, for their own use, such fees as may be from time to time authorized to be taken by any Orders to

Rules of the Court of Chancery under “The Companies Act, 1862 and 1867.”

In winding-up matters ordinary practice of Chancery Division applies in absence of other directions.

*Rules under Companies Act, 1862, rule 74.*

Application of rules.

*Rules under Companies Act, 1862, rule 75.*

Commencement of rules.

*Rules under Companies Act, 1862, rule 76.*

Interpretation of rules.

*Rules under Companies Act, 1862, rule 77.*

Rules not to take away powers as to course of proceedings. *Rules under Companies Act, 1862, rule 73.*

## (3.) Fees.

*The Companies Act,*  
1862, s. 46.

“ be made by the Commissioners of the Treasury, with the consent of the Lord Chancellor ; and the Commissioners of the Treasury are hereby authorized and empowered, with such consent as aforesaid, from time to time to make such orders :  
“ Provided that it shall be lawful for the said Commissioners, with the like consent as aforesaid, by an order to direct that  
“ after the date named in the order, any registrar or high bailiff shall, in lieu of receiving such fees, be paid such fixed  
“ or fluctuating allowance as may in each case be thought just,  
“ and after such date the said fees shall be accounted for and  
“ paid over by such registrar or high bailiff in such manner  
“ as may be directed in the order.”—30 & 31 Vict. c. 131, s. 46.

—Order as to  
Court fees.

An order as to Court fees has been made under the above enactments, which is set out in the footnote (e).

(4.) Before  
whom affidavits  
may be sworn.

*The Companies Act,*  
1862, s. 128.

Affidavits for use under the winding-up Acts may be sworn before the persons mentioned in the following section :—

“ Any affidavit, affirmation, or declaration required to be  
“ sworn or made under the provisions or for the purposes of  
“ this part of this Act may be lawfully sworn or made in Great  
“ Britain or Ireland, or in any colony, island, plantation, or  
“ place under the dominion of Her Majesty in foreign parts,  
“ before any Court, Judge, or person lawfully authorized to  
“ take and receive affidavits, affirmations, or declarations, or  
“ before any of Her Majesty’s Consuls or Vice-Consuls in any  
“ foreign parts out of Her Majesty’s dominions, and all Courts,  
“ Judges, Justices, Commissioners, and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such Court, Judge, person,  
“ Consul or Vice-Consul attached, appended, or subscribed to  
“ any such affidavit, affirmation, or declaration, or to any other

Companies Act, 1862," being of general application, is set out in this place :—

"In all proceedings under this part of this Act, all Courts, Judges, and persons judicially acting, and all other officers, judicial or ministerial, of any Court, or employed in enforcing the process of any Court, shall take judicial notice of the signature of any officer of the Courts of Chancery or Bankruptcy in England or in Ireland, or of the Court of Session in Scotland, or of the registrar of the Court of the Vice Warden of the Stannaries, and also of the official seal or stamp of the several offices of the Courts of Chancery or Bankruptcy in England or Ireland, or of the Court of Session in Scotland, or of the Court of the Vice Warden of the Stannaries, when such seal or stamp is appended to or impressed on any document made, issued, or signed under the provisions of this part of the Act, or any official copy thereof."—25 & 26 Vict. c. 89, s. 125.

tures to be judicially noticed.

*The Companies Act, 1862, s. 125.*

As regards the power of the Judge at Chambers, "The Companies Act, 1862," provides as follows :—

(6.) *Sittings at chambers.*

"Any judge of the High Court of Chancery may do in chambers any act which the Court is hereby authorised to do. . . ."—25 & 26 Vict. c. 89, s. 83.

*The Companies Act, 1862, s. 83.*

And the "Rules under Companies Act, 1862," relating to proceedings in chambers are as follows :—

"All orders made in chambers shall be drawn up in chambers, unless specially directed to be drawn up by the registrar, and shall be entered in the same manner, and in the same office, as other orders made in chambers."—"Rules under Companies Act, 1862," r. 52.

Orders made in chambers to be drawn up.

*Rules under Companies Act, 1862, rule 52.*

"The 48th, 49th, 50th, 51st, 52nd and 55th rules of the 35th of the Consolidated General Orders, shall apply to all certificates of the chief clerk in the matter of the winding up of any company; nevertheless, certificates on passing the official liquidator's accounts may be approved and signed by the judge without delay, and upon being so signed, shall be filed and forthwith acted upon."—"Rules under Companies Act, 1862," r. 56.

Certificates by registrar in winding-up.

*Rules under Companies Act, 1862, rule 56.*

"A register shall be kept of all proceedings in the judge's chambers, in each matter, in the same manner as required by the 57th rule of the 35th of the Consolidated General Orders, and no documents or proceedings are to be filed in the judge's chambers, unless the judge shall otherwise direct."—"Rules under Companies Act, 1862," r. 57.

Register to be kept in chambers; documents, &c., not to be filed.

The "Rules under Companies Act, 1862," contain a Schedule of Forms, the use of which does not, however, appear to be obligatory. The "Rules under Companies Act, 1862," provide as follows :—

*Rules under Companies Act, 1862, rule 57.*

"The forms set forth or referred to in the third schedule to these Orders, with such variations as the circumstances of

(7.) *Forms.*

*Rules under Companies Act, 1862, rule 69.*

(8.) Advertisements.

*Rules under Companies Act, 1862, rule 53.*

(9.) Fees to solicitors and counsel.

(10.) Powers to enforce orders as to winding-up.

General mode of enforcing orders.

*The Companies Act, 1862, s. 120.*

Order made in England to be enforced in

“each case may require, may be used for the respective purposes mentioned in such schedule.”—“Rules under Companies Act, 1862,” r. 69.

The following rule of the “Rules under Companies Act, 1862,” relates to advertisements :—

“When an advertisement is required for any purpose, except where otherwise directed by these rules, the advertisement shall be inserted once in the *London Gazette*, and in such other newspaper or newspapers, and for such number of times as may be directed. The judge may, in such cases as he shall think fit, dispense with any advertisement required by these rules.”—“Rules under Companies Act, 1862,” r. 53.

An order as to fees to counsel and solicitors (*f*) has been made under section 45 of “The Companies Act, 1867” (*g*).

The following section of “The Companies Act, 1862,” relates to the enforcement of Orders :—

“All Orders made by the Court of Chancery in England or Ireland under this Act may be enforced in the same manner in which Orders of such Court of Chancery made in any suit pending therein may be enforced, and for the purposes of this part of this Act the Court of the Vice Warden of the Stannaries shall, in addition to its ordinary powers, have the same power of enforcing any Orders made by it as the Court of Chancery in England has in relation to matters within the jurisdiction of such Court, and for the last-mentioned purposes the jurisdiction of the Vice Warden of the Stannaries shall be deemed to be co-extensive in local limits with the jurisdiction of the Court of Chancery in England.”—25 & 26 Vict. c. 89, s. 120.

“Any Order made by the Court in England for or in the course of the winding up of a company under this Act shall

“or in the course of the winding-up of a company shall be enforced in England and Ireland, and Orders made by the Court in Ireland for or in the course of winding up a company shall be enforced in England and Scotland by the Courts which would respectively have had jurisdiction in the matter of such company, if the registered office of the company were situate in the division of the United Kingdom where the order is required to be enforced, and in the same manner in all respects as if such order had been made by the Court required to enforce the same in the case of a company within its own jurisdiction.”—25 & 26 Vict. c. 89, s. 122.

“Where any order, interlocutor, or decree made by one Court is required to be enforced by another Court, as hereinbefore provided, an office copy of the order, interlocutor, or decree so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such office copy shall be sufficient evidence of such order, interlocutor, or decree having been made, and thereupon such last-mentioned Court shall take such steps in the matter as may be requisite for enforcing such order, interlocutor, or decree, in the same manner as if it were the order, interlocutor, or decree of the Court enforcing the same.”—25 & 26 Vict. c. 89, s. 123.

Mode of producing orders to be enforced by other Courts.

*The Companies Act*, 1862, s. 123.

## SECTION II.—THE JURISDICTION AND PROCEEDINGS ON A COMPULSORY WINDING UP.

The jurisdiction to make an order for a compulsory winding up and the proceedings in such a proceeding can most briefly be stated as follows :—

Compulsory orders to wind-up.

### (a.) *When a compulsory order to wind up may be made.*

“A company under this Act may be wound up by the Court as hereinafter defined, under the following circumstances ; (that is to say,)

When a compulsory winding-up order may be made.

“(1.) Whenever the company has passed a special resolution requiring the company to be wound up by the Court :

*The Companies Act*, 1862, s. 79.

“(2.) Whenever the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year :

“(3.) Whenever the members are reduced in number to less than seven :

“(4.) Whenever the company is unable to pay its debts :

“(5.) Whenever the Court is of opinion that it is just

When a company is to be deemed "unable to pay its debts." *The Companies Act, 1862, s. 80.*

"and equitable that the company should be wound up."—25 & 26 Vict. c. 89, s. 79.

"A company under this Act shall be deemed to be unable to pay its debts :

"(1.) Whenever a creditor, by assignment or otherwise, to whom the company is indebted, at law or in equity, in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at their registered office, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor :

"(2.) Whenever, in England and Ireland, execution or other process issued on a judgment, decree, or order obtained in any Court in favour of any creditor, at law or in equity, in any proceeding instituted by such creditor against the company, is returned unsatisfied in whole or in part : . . . .

"(3.) Whenever it is proved to the satisfaction of the Court that the company is unable to pay its debts."—25 & 26 Vict. c. 89, s. 80.

(b.) *The Petition for Winding up.*

Petition the mode of ob-

Where it is sought to get a company or society wound up by a compulsory order such order can only be obtained by peti-



“ shall be capable of presenting a petition for winding up such Company unless the members of the company are reduced in number to less than seven, or unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for a period of at least six months during the eighteen months previously to the commencement of the winding-up, or have devolved upon him through the death of a former holder :

tributory may present a petition to wind-up.

*The Companies Act, 1867, s. 40.*

“ Provided that where a share has during the whole or any part of the six months been held by or registered in the name of the wife of a contributory either before or after her marriage, or by or in the name of any trustee or trustees for such wife or for the contributory, such share shall for the purposes of this section be deemed to have been held by and registered in the name of the contributory.”—30 & 31 Vict. c. 131, s. 40.

The petition must be intituled, in the matter of “ The Companies Act, 1862,” and it is presumed that when an Industrial or Provident Society, or a Building Society, is sought to be wound up, the petition will also be intituled “ In the matter of The Industrial and Provident Societies Act, 1876,” or “ In the matter of the Building Societies Act, 1874 ” (as the case may be). The following rule relates to this subject :—

How petition to be intituled.

“ Every petition for the winding-up of any company by the Court, or subject to the supervision of the Court, shall be intituled in The matter of ‘ The Companies Act, 1862,’ and of the company to which such petition shall relate, describing the company by its most usual style or firm.”—“ Rules under Companies Act, 1862,” r. 1.

*Rules under Companies Act, 1862, rule 1.*

Every petition for winding-up a society must be verified by affidavit, as appears from the following rule of “ The Rules under Companies Act, 1862 ” :—

Every petition to wind-up to be verified by affidavit.

“ Every petition for the winding-up of any Company by the Court, or subject to the supervision of the Court, shall be verified by an affidavit referring thereto, in the form or to the effect set forth in Form No. 2 in the third Schedule hereto ; such affidavit shall be made by the petitioner, or by one of the petitioners, if more than one, or, in case the petition is presented by the company, by some director, secretary, or other principal officer thereof ; and shall be sworn after and filed within four days after the petition is presented, and such affidavit shall be sufficient *primâ facie* evidence of the statements in the petition.”—“ Rules under Companies Act, 1862,” r. 4.

*Rules under Companies Act, 1862, rule 4.*

Form of  
affidavit of  
verification.  
Service of the  
petition.

Mode of  
service.

*Rules under  
Companies  
Act, 1862,  
rule 3.*

Petition to be  
advertised  
before hearing.

In what  
papers adver-  
tisement to be  
inserted.

*Rules under  
Companies  
Act, 1862,  
rule 2.*

The form of affidavit referred to in the above rule is set out in the foot-note (i).

The petition having been prepared, it must be served. The following rules of the "Rules under Companies Act, 1862," relate to the service of the petition :—

"Every such petition shall, unless presented by the company, be served at the registered office, if any, of the company, and if no registered office, then at the principal or last known principal place of business of the company, if any such can be found, upon any member, officer, or servant of the company there, or in case no such member, officer, or servant can be found there, then by being left at such registered office or principal place of business, or by being served on such member or members of the company as the court may direct ; and every petition for the winding-up of a Company subject to the supervision of the Court, shall also be served upon the liquidator (if any) appointed for the purpose of winding-up the affairs of the company."—"Rules under Companies Act, 1862," r. 3.

Every petition is required to be advertised seven clear days before the hearing. On this subject, the "Rules under the Companies Act, 1862," provide as follows :—

"Every such petition shall be advertised seven clear days before the hearing, as follows :—

"(1.) In the case of a company whose registered office, or if there shall be no such office, then whose principal or last known principal place of business is or was situate within ten miles from Lincoln's Inn Hall, once in the *London Gazette*, and once at least in two London daily morning newspapers.

"(2.) In the case of any other company, once in the *London Gazette*, and once at least in two local newspapers circulating

A form of advertisement of petition is provided (*k*).

Every contributory or creditor of the company is entitled to obtain a copy of the petition. On this subject, the "Rules under Companies Act, 1862," provide :—

"Every contributory or creditor of the company shall be entitled to be furnished, by the solicitor to the petitioner, with a copy of the petition, within twenty-four hours after requiring the same, on paying at the rate of fourpence per folio of seventy-two words for such copy."—"Rules under Companies Act, 1862," r. 5.

The presentation of a petition is the legal commencement of the winding-up, as "The Companies Act, 1862," provides :—

"A winding-up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up."—25 & 26 Vict. c. 89, s. 84.

Form of advertisement of petition.

Every contributory or creditor is entitled to a copy of petition.

Rules under Companies Act, 1862, rule 5.

When winding-up of society deemed to commence.

The Companies Act, 1862, s. 84.

(c.) *Interim Injunctions and Provisional Liquidators.*

At any time after the presentation of a petition for winding-up a company, and before an order has been made, the Court may, on due application, either restrain further legal proceedings against the company, or may appoint a provisional liquidator. Such powers are conferred by the following section of "The Companies Act, 1862" :—

"The Court may, at any time after the presentation of a petition for winding-up a company under this Act, and before making an order for winding-up the company, upon the application of the company, or of any creditor or contributory of the company, restrain further proceedings in any action, suit, or proceeding against the company, upon such terms as the Court thinks fit; the Court may also at any time after the presentation of such petition, and before the

Jurisdiction to grant interim injunctions or to appoint provisional liquidators.

The Companies Act, 1862, s. 85.

(*k*) The following is the form in question :—

"No. 1. *Advertisement of Petition.* [Rule 2.]

"In the matter of 'The Companies Act, 1862;' and of the  
"Company.

"Notice is hereby given, that a petition for the winding-up of the above-named Company by the Court [or, subject to the supervision of the Court] of Chancery was, on the      day of      , 186      , presented to the Lord Chancellor [or, the Master of the Rolls] by the said Company, [or, by A. B., of      , a creditor [or, contributory] of the said Company [or, as the case may be]. And that the said Petition is directed to be heard before the Vice-Chancellor [or, Master of the Rolls] on the      day of      , 186      ; and any creditor or contributory of the said Company desirous to oppose the making of an order for the winding-up of the said Company under the above Act, should appear at the time of hearing, by himself or his counsel, for that purpose; and a copy of the Petition will be furnished to any creditor or contributory of the said Company requiring the same, by the undersigned, on payment of the regulated charge for the same.

"C. and D., of &c. [agents for E. and F., of &c.]

"Solicitors for the Petitioner."

“first appointment of liquidators, appoint provisionally an  
“official liquidator of the estate and effects of the company.”  
—25 & 26 Vict. c. 89, s. 85.

### Applications for interim injunctions.

An application for an interim injunction may be made *ex parte*, either on application by motion in open Court or to the Judge as sitting in Chambers.

### Appointment of provisional liquidators.

The appointment of a provisional liquidator is governed by the following rule of the "Rules under Companies Act, 1862":—

*Rules under  
Companies  
Act, 1862,  
rule 15.*

"Where it is desired to appoint provisionally an official liquidator, an application for that purpose may, at any time after the presentation of the petition for winding-up the company, be made by summons, without advertisement or notice to any person, unless the Judge shall otherwise direct; and such provisional official liquidator may, if the Judge shall think fit, be appointed without security."—"Rules under Companies Act, 1862," r. 15.

**Form of order appointing provisional liquidator.**

A form of order appointing a provisional liquidator is provided and is set out in a footnote (1).

**Rules relating to permanent official liquidators are applicable to provisional liquidators.**

The duties and powers of a provisional liquidator are defined by the following rule :—

*Rules under  
Companies  
Act, 1862,  
rule 59.*

“All the above rules relating to official liquidators, shall, so far as the same are applicable, and subject to the directions of the Judge in each case, apply to provisional official liquidators.”—“Rules under Companies Act, 1862,” r. 59.

**Notices to**  
admit.

*(d.) Notices to admit Documents at the Hearing of a Petition.*

The following rule of "The Rules under Companies Act, 1862," enables a party to a petition to give notices to admit documents at the hearing :—

4. Agreement to our proceedings in Court on Chambers relation

“paid by the party so refusing or neglecting, unless the Judge shall be of opinion that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice shall have been given, except in cases where the omission to give such notice has been, in the opinion of the taxing master, a saving of expense.”—“The Rules under Companies Act, 1862,” r. 54.

(e.) *The Hearing of the Petition.*

The powers of the Court upon the hearing of the petition are indicated by the following section of “The Companies Act, 1862” :—

Hearing of petition.

“Upon hearing the petition the Court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any interim order, or any other order that it deems just.”—25 & 26 Vict. c. 89, s. 86.

*The Companies Act, 1862, s. 86.*

The circumstances under which it would be justifiable to make a winding-up order appear from section 79 and 80 of “The Companies Act, 1862,” which have already been set out (m).

Under what circumstances winding-up order will be made.

Instead of either making an immediate order for winding-up or dismissing the petition the Court may proceed to ascertain the wishes of the creditors or contributories. Power to adopt this course is governed by the following section of “The Companies Act, 1862” :—

Court may regard wishes of the creditors and contributories, and summon meetings thereof.

“The Court may, as to all matters relating to the winding-up, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may, if it thinks it expedient, direct meetings of the creditors or contributories to be summoned, held, and conducted in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court: in the case of creditors, regard is to be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company.”—25 & 26 Vict. c. 89, s. 91.

*The Companies Act, 1862, s. 91.*

(f.) *Meetings of the Company held by direction of the Court.*

Meetings of creditors and contributories held under the above enactment are regulated by the following “Rules under Companies Act, 1862” :—

Meetings of creditors and contributories.

“When the Judge shall direct a meeting of the creditors or

*Rules under Companies Act, 1862, rule 45.*

“contributories of the company to be summoned under the “91st or 149th section of the said Act, the official liquidator “shall give notice in writing seven clear days before the day “appointed for such meeting, to every creditor or contributory, “of the time and place appointed for such meeting, and of the “matter upon which the Judge desires to ascertain the wishes “of the creditors or contributories; or, if the Judge shall so “direct, such notice may be given by advertisement, in which “case the object of the meeting need not be stated, and it “shall not be necessary to insert such advertisement in the “*London Gazette*.”—“Rules under Companies Act, 1862,” r. 45.

Form of notice of advertisement of meeting.

A form of notice or advertisement of meeting of creditors or contributories is provided (n).

The mode of voting at a meeting is provided by the following rule:—

Modes of voting at a meeting.

*Rules under Companies Act, 1862, rule 46.*

“The votes of the creditors or contributories of the company “at any meeting summoned by the direction of the Judge, may “be given either personally or by proxy; but no creditor shall “appoint a proxy who is not a creditor of the company whose “debt or claim has been allowed, and no contributory shall “appoint a proxy who is not a contributory of the company.” —“Rules under Companies Act, 1862,” r. 46.

Form of appointment of proxy.

A form of appointment of proxy to vote at meeting is provided (o).

(n) The form in question is as follows:—

“No. 45. Notice [or Advertisement] of Meeting of Creditors or Contributories. “[Rules 45, 46.]

“In the matter, &c.

“Notice is hereby given that the Master of the Rolls [or, Vice-Chancellor “] has directed a meeting of the creditors [or, contributories] of the “above-named Company to be summoned pursuant to the above statute, for the

The direction of the Judge for any meeting and the appointment of a person to act as chairman thereof has to be testified as mentioned in the following rule:—

“The direction of the Judge for any meeting of creditors or contributories under the the 91st or 149th section of the said Act, and the appointment of a person to act as chairman of any such meeting, shall be testified by a memorandum signed by the chief clerk of the Judge.”—“Rules under Companies Act, 1862,” r. 47.

A form of memorandum of appointment of a chairman is provided (p).

The chairman is required to make a report of the result of the meeting, and for this purpose a form is provided (q).

How direction of Judge for any meeting and for appointment of chairman to be testified.

*Rules under Companies Act, 1862, rule 47.*

Form of memorandum of appointment of chairman.

Form of chairman's report of the result of meeting.

(p) The form in question is as follows:—

“No. 47. *Memorandum of Appointment of a Person to Act as Chairman at Meeting of Creditors or Contributories.* [Rule 47.]

“In the matter, &c.

“The Master of the Rolls [or, Vice-Chancellor] has appointed Mr. H. T., of &c., one of the creditors [or, contributories] of the above-named Company, to act as chairman of a meeting of the creditors [or, contributories] of the said Company, summoned by direction of the said Judge, pursuant to the above statute, to be held on day, the day of , 186 , at o'clock, in the noon, at , in the county of , and to report the result of such meeting to the said Judge.

“The said meeting is summoned for the purpose of ascertaining the wishes of the creditors [or, contributories] of the said Company as to [state the object for which meeting called]; and at such meeting the votes of the creditors [or, contributories] may be given either personally or by proxy.

“Dated this day of 186 .

“G. H., Chief Clerk.”

(q) The form in question is as follows:—

“No. 48. *Chairman's Report of Result of Meeting of Creditors or Contributories.* [Rules 46, 46, 47.]

“In the matter, &c.

“I, H. T., the person appointed by the Master of the Rolls [or, Vice-Chancellor] to act as chairman of a meeting of the creditors [or, contributories] of the above-named Company, summoned by advertisement, [or, notice] dated the day of 186 , and held on the day of 186 , at in the county of , do hereby

report to the said Judge the result of such meeting as follows:—

“The said meeting was attended, either personally or by proxy, by creditors to whom debts against the said Company have been allowed, amounting in the whole to the value of £ [or, by contributories, holding in the whole shares in the said Company, and entitled respectively by the regulations of the Company, to the number of votes hereinafter mentioned].

“The question submitted to the said meeting was, whether the creditors [or, contributories] of the said Company approved of the proposal of the official liquidator of the said Company, that, &c. [as the case may be], and wished that such proposal should be adopted and carried into effect.

“The said meeting was unanimously of opinion that the said proposal should [or, should not] be adopted and carried into effect. [or, The result of the voting upon such question was as follows:—

“The undermentioned creditors [or, contributories], voted in favour of the said proposal being adopted and carried into effect:—

(g.) *Winding-up Orders.*

At the hearing of the petition, or on any adjournment thereof, the Court may, on proper grounds being shown, make a winding-up order.

A form of order for winding-up is provided (r).

“The Companies Act, 1862,” enacts that :—

“When an order has been made for winding-up a company under this Act, a copy of such order shall forthwith be

Form of order  
for winding-  
up.

Copy of order  
to be for-  
warded to  
registrar.

Name of Creditor <i>or</i> , Contributory].	Address.	Value of Debt [ <i>or</i> , Number of Shares].	Number of Votes conferred on each Con- tributory by the Regulations of the Company.

“The undermentioned creditors [*or*, contributories], voted against the said  
“proposal being adopted and carried into effect.

Name of Creditor [ <i>or</i> , Contributory].	Address.	Value of Debt [ <i>or</i> , Number of Shares].	Number of Votes conferred on each Con- tributory by the Regulations of the Company.



"forwarded by the company to the Registrar of Joint Stock Companies, who shall make a minute thereof in his books relating to the company."—25 & 26 Vict. c. 89, s. 88 (s).

"The Rules under Companies Act, 1862," provide as follows :—

"Every order for the winding-up of a company by the Court, or subject to its supervision, shall, within twelve days after the date thereof, be advertised by the petitioner once in the *London Gazette*, and shall be served upon such persons (if any) and in such manner as the Court may direct (f)."—"The Rules under Companies Act, 1862," r. 6.

"A copy of every order for winding-up a company, certified to be a true copy thereof as passed and entered, shall be left by the petitioner at the chambers of the Judge, within ten days after the same shall have been passed and entered, and in default thereof any other person interested in the winding-up may leave the same, and the Judge may, if he thinks fit, give the carriage and prosecution of the order to such person. Upon such copy being left a summons shall be taken out to proceed with the winding-up of the company, and be served upon all parties who may have appeared upon the hearing of the petition. Upon the return of such summons, a time shall, if the Judge think fit, be fixed for the appointment of an official liquidator, and for the proof of debts, and for the list of contributories to be brought in, and directions may be given as to the advertisements to be issued for all or any of such purposes, and generally as to the proceedings and the parties to attend thereon. The proceedings under the order shall be continued by adjournment, and, when necessary, by further summons, and any such direction as aforesaid may be given, added to, or varied, at any subsequent time, as may be found necessary."—"The Rules under Companies Act, 1862," r. 7.

An order for winding-up may be at any time stayed. This is provided by the following section of "The Companies Act, 1862" :—

(s) "The Building Societies Act, 1874" (37 & 38 Vict. c. 42), enacts that :—  
"Notice of the commencement and termination of every dissolution or winding-up shall be sent to the registrar, and registered by him."

"The Industrial and Provident Societies Act, 1876," does not provide for the transmission of notice of winding-up to the registrar.

(f) A Form of Advertisement is provided and is as follows :—

"No. 5. *Advertisement of Order to Wind-up.* [Rule 6.]

"In the matter, &c.

"By an Order made by the Master of the Rolls [or, the Vice-Chancellor], in the above matter, dated the \_\_\_\_\_ day of \_\_\_\_\_, 186\_\_\_\_, on the petition of the above-named Company [or, A. B., of \_\_\_\_\_], It was ordered that, &c. [as in Order].

"C. & D., of &c.

"Solicitors for the said Petitioner."

Order to wind-up to be advertised and a copy left at chambers of Judge.

Advertising order, &c.

*Rules under Companies Act, 1862, rule 6.*

Copy to be left at chambers of Judge.

*Rules under Companies Act, 1862, rule 7.*

Staying proceedings under order to wind-up.

Notice of commencement of winding-up of a building society to be given to registrar of friendly society.

May be done  
at any time.

*The Com-  
panies Act,*  
1862, s. 89.

“The Court may at any time after an order has been made for winding-up a company, upon the application by motion of any creditor or contributory of the company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit.”—25 & 26 Vict. c. 89, s. 89.

(K.) *Effect of a Winding-up Order.*

Effect of  
order to  
wind-up.

—Makes void  
dispositions  
of property.

*The Com-  
panies Act,*  
1862, s. 153.

It may be as well now to consider briefly the effect of the order to wind-up.

“The Companies Act, 1862,” provides as follows :—

“Where any company is being wound-up by the Court or subject to the supervision of the Court, all dispositions of the property, effects, and things in action of the company, and every transfer of shares, or alteration in the status of the members of the company, made between the commencement of the winding-up (*u*) and the order for winding-up, shall, unless the Court otherwise orders, be void.”—25 & 26 Vict. c. 89, s. 153.

It is also provided, that in the event of a company being wound-up, any one of certain acts shall be deemed to amount to a fraudulent preference, and shall be invalid accordingly. The provision on the subject is as follows :—

—Certain  
Acts to be  
deemed  
fraudulent  
and void.

*The Com-  
panies Act,*  
1862, s. 164.

“Any such conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property as would, if made or done by or against any individual trader, be deemed in the event of his bankruptcy to have been made

As soon as the order to wind up has been made, all legal proceedings are thereby stayed. "The Companies Act, 1862," provides as follows :—

"When an order has been made for winding up a company under this Act no suit, action, or other proceeding shall be proceeded with or commenced against the company except with the leave of the Court, and subject to such terms as the Court may impose."—25 & 26 Vict. c. 89, s. 87.

Moreover, the winding-up order renders void all attachments, sequestrations, distress, or execution against the society, as appears from the following section of "The Companies Act, 1862" :—

"Where any company is being wound up by the Court or subject to the supervision of the Court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents."—25 & 26 Vict. c. 89, s. 163.

—Legal proceedings against company are stayed.

*The Companies Act, 1862, s. 87.*

All attachments, &c., against company made void.

*The Companies Act, 1862, s. 163.*

#### (i). *The Appointment of an Official Liquidator.*

It is usual, when a winding-up order has been made, to appoint an official liquidator for the purpose of conducting the proceedings. This official is appointed by the Court. "The Companies Act, 1862," provides as follows :—

"For the purpose of conducting the proceedings in winding up a company, and assisting the Court therein, there may be appointed a person or persons to be called an official liquidator or official liquidators ; and the Court having jurisdiction may appoint such person or persons, either provisionally or otherwise, as it thinks fit, to the office of official liquidator or official liquidators ; in all cases if more persons than one are appointed to the office of official liquidator, the Court shall declare whether any Act hereby required or authorized to be done by the official liquidator is to be done by all or any one or more of such persons. The Court may also determine whether any and what security is to be given by any official liquidator on his appointment ; if no official liquidator is appointed, or during any vacancy in such appointment, all the property of the company shall be deemed to be in the custody of the Court."—25 & 26 Vict. c. 89, s. 92.

With reference to the mode of appointment of the official liquidator, the rules under "The Companies Act, 1862," provide as follows :—

"The Judge may appoint a person to the office of official liquidator, without previous advertisement, or notice to any party, or fix a time and place for the appointment of an official liquidator, and may appoint or reject any person

Appointment of official liquidator.

*The Companies Act, 1862, s. 92.*

Mode of appointment of official liquidator.

*Rules of the Companies Act, 1862, rule 8.*

Time and place of appointment of official liquidator, when fixed to be advertised.

*Rules under Companies Act, 1862, rule 9.*

Form of advertisement.

Proposal for appointment of a particular person as official liquidator.

Mode of appointment.

*Rules under Companies Act, 1862, rule 11.*

“nominated at such time and place, and appoint any person not so nominated.”—“Rules of the Companies Act, 1862,” r. 8.

The time and place for appointment of an official liquidator when fixed must be advertised, as appears from the following rule of “The Rules under Companies Act, 1862” :—

“When a time and place are fixed for the appointment of an official liquidator, such time and place shall be advertised in such manner as the Judge shall direct, so that the first or only advertisement shall be published within fourteen days and not less than seven days before the day so fixed.”—“Rules under Companies Act, 1862,” r. 9.

A form of advertisement under this rule is provided (x).

Where the time and place for the appointment of an official liquidator has been fixed and advertised, the contributors may, if they choose, sign a proposal for the appointment of a particular person as official liquidator according to the form in the schedule (y).

“The Rules under Companies Act, 1862,” with reference to the mode of appointment of an official liquidator, provide :—

“The official liquidator shall be appointed by order ; and unless he shall have given security, a time shall be fixed by such order within which he is to do so ; and the order shall fix the times or periods at which the official liquidator is to leave his accounts of his receipts and payments at the Judge’s chambers, and shall direct that all moneys to be received

(x) The Form in question is as follows :—

“No. 6. *Advertisement of Time and Place fixed for the Appointment of Official Liquidator.* [Rule 9.]

“In the matter, &c.

“Notice is hereby given, that the Master of the Rolls [or, the Vice-Chancellor] has fixed the day of 186 at o’clock in the

“shall be paid into the Bank of England (z), immediately after the receipt thereof, to the account of the official liquidator of the company, and an account shall be opened there accordingly; and an office copy of the order shall be lodged at the Bank of England.”—“Rules under Companies Act, 1862,” r. 11.

A form of direction to open account at the Bank of England (z), is provided (a).

It is to be noticed that the Court may either appoint a permanent official liquidator or a provisional one. Forms of orders for the appointment of official liquidator is provided (b).

Forms of orders of appointment of official liquidator.

(z) Or into some other Bank to be appointed by the Court in lieu of the Bank of England. See “The County Court Rules, 1875,” Ord. xxxix. *ante*, p. 1120.

(a) The Form in question is as follows:—

“No. 14. *Direction to open Account at the Bank of England.*

“[Rules 11, 32, 36—44.]

“The Master of the Rolls [or, Vice-Chancellor], at \_\_\_\_\_ day of \_\_\_\_\_, 186 \_\_\_\_  
“Chambers. In the matter, &c.  
“To the Governor and Company of the Bank of England.  
“Gentlemen,

“An Order, dated the \_\_\_\_\_ day of \_\_\_\_\_, 186 \_\_, having been made in the above matter by the Master of the Rolls [or, the Vice-Chancellor], for winding-up the above-named Company by the Court of Chancery, under the provisions of the said Act, and R. P. H., of \_\_\_\_\_, having by Order dated the \_\_\_\_\_ day of \_\_\_\_\_, 186 \_\_, been appointed the official liquidator of the said Company, You are requested to open an account, to be entitled “The Account of the Official Liquidator of the \_\_\_\_\_ Company” in your Books, pursuant to the said Act.

“All cheques drawn upon such account must be signed by the official liquidator, whose signature is attached hereto, and countersigned by one of the Chief Clerks of the said Judge, whose signatures are also attached hereto.

“I am, Gentlemen,

“Your most obedt. servt.,

“G. H., Chief Clerk.

“Signatures.

“R. P. H., Official Liquidator.

“G. W. { Chief Clerks of the Master of the Rolls

“G. H. { [or, Vice-Chancellor]”

(b) The Form of Order referred to is as follows:—

“No. 8. *Order Appointing an Official Liquidator.* [Rules 10, 11.]

“Master of the Rolls [or, Vice-Chancellor], at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 186 \_\_\_\_  
“Chambers. In the matter, &c.

“Upon the application, &c., and upon reading, &c., the Judge doth hereby appoint R. P. H., of, &c., official liquidator of the above-named Company. [If security has not been given, add, and it is ordered that the said R. P. H. do, on or before the \_\_\_\_\_ day of \_\_\_\_\_ next, give security to be approved of by the Judge.] And it is ordered that the said R. P. H. do, on the \_\_\_\_\_ day of \_\_\_\_\_, 186 \_\_, and the same days in each succeeding year, leave his accounts at the chambers of the said Judge. And it is ordered that all moneys to be received by the said R. P. H. be paid by him into the Bank of England to the credit of the account of the official liquidator of the said Company, within seven days after the receipt thereof. [In case two or more official liquidators are appointed, add, and the said Judge doth declare that the following acts, required or authorised by the above statute to be done by the official liquidator, may be done by either [or, any one, or, two] of the official liquidators hereby appointed, that is to say [describe the acts]; and that all other acts so required or authorised to be done by both [or, all] the official liquidators hereby appointed.]”

See *ante*, p. 1130, for Form of Order appointing provisional liquidator—(Form No. 9).

Security to be given by official liquidator on appointment.

*Rules under Companies Act, 1862, rule 10.*

Form of recognizance.

The official liquidator is required by Rule 1 to give security on his appointment. The mode of giving security is indicated by the following rule of "The Rules under the Companies Act, 1862" :—

"Every official liquidator shall give security by entering into a recognizance with two or more sufficient sureties, in such sum as the Judge may approve; and the Judge may, if he shall think fit, accept the security of any guarantee society established by charter or Act of Parliament in England, in lieu of the security of such sureties as aforesaid or of any of them."—"Rules under the Companies Act, 1862," r. 10.

A form of recognizance of the official liquidator and sureties is provided (c).

(c) The Form in question is as follows :—

"No. 10. *Recognizance of the Official Liquidator and Sureties.* [Rule 10.]

In the matter, &c.  
Master of the Rolls (or Vice-Chancellor  
approved of and allowed this recognizance.  
G. H., Chief Clerk.

"R. P. H., of, &c., W. B. of, &c., and T. P., of, &c., before our Sovereign Lady the Queen in her High Court of Chancery personally appearing, do acknowledge themselves, and every of them doth acknowledge himself, to owe to the Right Honourable Sir John Romilly, Knight, the Master of the Rolls, and the Honourable Sir Richard Torin Kindersley, Knight, the Senior Vice-Chancellor of the said Court, the respective sums of lawful money of Great Britain set opposite to their respective names in the Schedule hereto, to be paid to the said Sir John Romilly and Sir Richard Torin Kindersley, or one of them, or the executors or administrators of them, or one of them; and in default of payment of the said sums, the said R. P. H., W. B., and T. P., are willing and do agree, and every of them is willing and doth agree for himself, his heirs, executors, and administrators, by these presents, that the said sums shall be levied, recovered, and received of and from them and every of them, and of and from all and singular the manors, messuages, lands, tenements, and hereditaments, goods, and chattels, of them and every of them, wheresoever the same shall be found. Witness our Sovereign Lady Victoria, by the

Also a form of affidavit of sureties (*d*).

Whenever the official liquidator passes his accounts, and at other times, if Judge desires it, he must satisfy the Court that his sureties are living.

"The official liquidator shall, on each occasion of passing his accounts (*e*), and also whensoever the Judge may so require, satisfy the Judge that his sureties are living, and resident in Great Britain, and have not been adjudged bankrupt or become insolvent, and in default thereof he may be required to enter into fresh security within such time as shall be directed."—"Rules under Companies Act, 1862," r. 13.

It is to be noticed that under the circumstances indicated by the above rule, an official liquidator may be required to find fresh security.

When the requisite security has been given, the same is certified.

"When an official liquidator has given security pursuant to the directions in the order appointing him, the same shall be certified by the chief clerk, as in the case of a receiver appointed in a cause, subject to giving security."—"Rules under Companies Act, 1862," r. 12.

The official liquidator having been duly appointed, and having given the requisite security, his appointment must be advertised.

"Every appointment of an official liquidator shall be advertised, in such manner as the Judge shall direct, immediately after he has been appointed, and has given security."—"Rules under Companies Act, 1862," r. 14.

A form of advertisement under the above rule is provided (*f*).

"THE SCHEDULE ABOVE REFERRED TO.

"R. P. H.	_____	Thousand pounds.
"W. B.	_____	Thousand pounds.
"T. P.	_____	Thousand pounds.

"Taken and acknowledged by the above-named R. P. H., &c. &c."

(*d*) The Form in question is as follows:—

"No. 11. *Affidavit of Sureties*. [Rule 10.]

"In Chancery.

"In the matter, &c.

"We, W. B., of, &c., and T. P., of, &c., severally make oath, and say as follows:—

"1. I, the said W. B., for myself, say that I am worth the sum of £ of lawful money of Great Britain, over and above what is sufficient for the payment of all my just debts and liabilities.

"2. And I, the said T. P., for myself, say that I am worth the sum of £ of, &c. [*as above*].

"Sworn, &c."

(*e*) As to the periodical passing of the accounts of an official liquidator, see Rule 19 of Rules under Companies Act, 1862, *infra*, p. 1148.

(*f*) The Form in question is as follows:—

"No 15. *Advertisement of Appointment of Official Liquidator*. [Rule 14.]

"In the matter, &c.

"The Master of the Rolls [*or*, the Vice-Chancellor \_\_\_\_\_], has by an Order dated the \_\_\_\_\_ day of \_\_\_\_\_, 186\_\_\_\_, appointed R. P. H., of \_\_\_\_\_, to be official liquidator of the above-named Company.

"Dated this \_\_\_\_\_ day of \_\_\_\_\_, 186\_\_\_\_.

"G. H., Chief Clerk."

Form of affidavit of sureties.

Official liquidator, when he passes his accounts, must satisfy Court that his sureties are alive.

*Rules under Companies Act, 1862, rule 13.*

Certificate that official liquidator has given requisite security.

*Rules under Companies Act, 1862, rule 12.*

The appointment of official liquidator to be advertised.

*Rules under Companies Act, 1862, rule 14.*

Form of advertisement.

Vacancy in office of official liquidator to be filled up.

*The Companies Act, 1862, s. 93.*

Any vacancy occurring in the office of official liquidator may from time to time be filled up.

“ Any official liquidator may resign or be removed by the Court on due cause shown : And any vacancy in the office of an official liquidator appointed by the Court shall be filled by the Court : There shall be paid to the official liquidator such salary or remuneration, by way of per-centage or otherwise, as the Court may direct ; and if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs.”—25 & 26 Vict. c. 89, s. 93.

*Rules under Companies Act, 1862, rule 16.*

“ In case of the death, removal or resignation of an official liquidator, another shall be appointed in his room, in the same manner as directed in the case of a first appointment, and the proceedings for that purpose may be taken by such party interested as may be authorised by the Judge to take the same.”—“ Rules under Companies Act, 1862,” r. 16.

Remuneration.

Section 93 of “ The Companies Act, 1862 ” (*h*), provides for the remuneration of official liquidators. Moreover, the “ Rules under Companies Act, 1862,” provide that :—

Direction on this subject.

*Rules under Companies Act, 1862, rule 18.*

“ The official liquidator shall be allowed in his accounts, or otherwise paid, such salary or remuneration as the Judge may from time to time direct, including any necessary employment of assistants or clerks by the official liquidator, to which regard shall be had ; and such salary or remuneration may either be fixed at the time of his appointment, or at any time thereafter, as the Judge may think fit. Every allowance of such salary or remuneration, unless made at the time of his appointment, or upon passing an account, shall be made upon application for that purpose by the official liquidator, on notice to such persons (if any), and supported by such



"The official liquidator or liquidators shall be described by the style of the official liquidator or official liquidators of the particular company in respect of which he is or they are appointed, and not by his or their individual name or names ; he or they shall take into his or their custody, or under his or their control, all the property, effects, and things, in actions to which the company is or appears to be entitled, and shall perform such duties in reference to the winding-up of the company as may be imposed by the Court."—25 & 26 Vict. c. 89, s. 94.

To be styled by his official name and to take custody of property of company, and to perform such duties as Court may impose upon him.

*The Companies Act, 1862, s. 94.*

"The official liquidator shall have power, with the sanction of the Court, to do the following things :

What things the official liquidator is empowered to do with the sanction of the Court.

"To bring or defend any action, suit, or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company :

"To carry on the business of the company, so far as may be necessary for the beneficial winding up of the same :

*The Companies Act, 1862, s. 95.*

"To sell the real and personal and heritable and moveable property, effects, and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels :

"To do all acts, and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal :

"To prove, rank, claim, and draw a dividend in the matter of the bankruptcy or insolvency or sequestration of any contributory, for any balance against the estate of such contributory, and to take and receive dividends in respect of such balance, in the matter of bankruptcy or insolvency or sequestration, as a separate debt due from such bankrupt or insolvent, and rateably with the other separate creditors :

"To draw, accept, make, and endorse any bill of exchange or promissory note in the name and on behalf of the company, also to raise upon the security of the assets of the company from time to time any requisite sum or sums of money ; and the drawing, accepting, making, or endorsing of every such bill of exchange or promissory note as aforesaid on behalf of the company shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted, made, or endorsed by or on behalf of such company in the course of carrying on the business thereof :

"To take out, if necessary, in his official name, letters of administration to any deceased contributory, and

“ to do in his official name any other act that may be  
 “ necessary for obtaining payment of any monies due  
 “ from a contributory or from his estate, and which  
 “ act cannot be conveniently done in the name of the  
 “ company ; and in all cases where he takes out  
 “ letters of administration, or otherwise uses his  
 “ official name for obtaining payment of any monies  
 “ due from a contributory, such monies shall, for the  
 “ purpose of enabling him to take out such letters or  
 “ recover such monies, be deemed to be due to the  
 “ official liquidator himself :

“ To do and execute all such other things as may be  
 “ necessary for winding up the affairs of the company  
 “ and distributing its assets.”—25 & 26 Vict. c. 89,  
 s. 95.

Any of these  
 things may,  
 if Court so  
 direct, be done  
 by liquidator  
 without its  
 sanction.

*The Com-  
 panies Act,  
 1862, s. 96.*

Where official  
 liquidator  
 assigns a  
 chose in  
 action, the  
 assignee may  
 sue or be sued  
 as such.

“ The Court may provide by any order that the official  
 “ liquidator may exercise any of the above powers without the  
 “ sanction or intervention of the Court, and where an official  
 “ liquidator is provisionally appointed may limit and restrict  
 “ his powers by the order appointing him.”—25 & 26 Vict.  
 c. 89, s. 96.

It is to be noticed that section 95, above set out, empowers  
 the official liquidator to sell the property of a company, includ-  
 ing things in action. In order to make the assignment of a  
 chose in action effectual, it is provided by “ The Companies Act,  
 1862,” that :—

“ Any person to whom any thing in action belonging to the  
 “ company is assigned in pursuance of this Act may bring or  
 “ defend any action or suit relating to such thing in action in  
 “ his own name.”—25 & 26 Vict. c. 89, s. 157 (i).

*The official liquidator cannot draw, accept, make, or endorse*

The following section of "The Companies Act, 1862," enables liquidators, when duly sanctioned so to do, to make terms of compromise with creditors :—

"The liquidators may, with the sanction of the Court, where the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company where the company is being wound up altogether voluntarily, pay any classes of creditors in full, or make such compromise or other arrangement as the liquidators may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable."—25 & 26 Vict. c. 89, s. 159.

Liquidators may compromise debts and claims.

*The Companies Act, 1862, s. 159.*

The "Rules under Companies Act, 1862," contain the following general provision indicating when the official liquidator must before acting obtain the direction or sanction of the Judge :—

"The direction or sanction of the Judge for any other proceeding or act to be taken or done by the official liquidator, shall be obtained upon summons, and an order shall be drawn up thereon, unless the Judge shall otherwise direct."—"Rules under Companies Act, 1862," r. 50.

Mode of obtaining direction or sanction of the Court.

*Rules under Companies Act, 1862, rule 50.*

A form of order or memorandum of the sanction of the Judge for certain acts to be done by the official liquidator is provided (*l*).

Form of order or memorandum of sanction of Judge.

The following rules of "The Rules under Companies Act, 1862," impose upon the official liquidator the duty of depositing securities received by him into the Bank of England, and also of paying into the said bank all money that may come to his hands :—

Duty of official liquidator to deposit securities in and pay money into Bank of England.

"The Companies Act, 1862," enacts that :—

"All monies, bills, notes, and other securities paid and de-

"acceptance of this bill of exchange by the official liquidator on behalf of the said Company.

"G. H., Chief Clerk."

(*l*) The Form in question is as follows :—

"No. 52. *Order or Memorandum of the Sanction of the Judge for certain Acts to be done by the Official Liquidator.* [Rule 50.]

"The Master of the Rolls, [or, ] day of , 18 .  
 "Vice-Chancellor [or, ] In the matter, &c.  
 "at Chambers.  
 "The Master of the Rolls [or, Vice-Chancellor ] doth hereby sanction [or, has sanctioned] the following proceedings being taken [or, acts being done] by the official liquidator of the above-named Company, namely, [*state the proceedings to be taken or acts to be done as,*] the bringing [or, instituting] and prosecuting an action at law [or, suit in equity], in the name and on behalf of the said Company, against [or, defending an action at law [or, suit in equity] brought [or, instituted] against the said Company] by K. M., of &c., to recover a debt or sum of £ alleged to be due from [or, to] the said K. M. to [or, from] the said Company, &c.

"G. H., Chief Clerk."

*The Companies Act, 1862, s. 104.*

“livered into the Bank of England (*m*) or any branch thereof  
“in the event of a company being wound up by the Court  
“shall be subject to such order and regulation for the keeping  
“of the account of such monies and other effects, and for the  
“payment and delivery in, or investment and payment and  
“delivery out of the same as the Court may direct.”—25 & 26  
Vict. c. 89, s. 104.

*Rules under Companies Act, 1862, rule 42.*

“All bills, notes, and other securities delivered into the Bank  
“of England (*m*), shall be delivered out upon a request signed  
“by the official liquidator, and countersigned by the chief  
“clerk of the Judge; and moneys placed to the account of  
“the official liquidator shall be paid out upon cheques or  
“orders, signed by the official liquidator, and countersigned by  
“the chief clerk of the Judge.”—“Rules under Companies  
Act, 1862,” r. 42.

*Rules under Companies Act, 1862, rule 37.*

“All bills, notes, and other securities payable to the company  
“or to the official liquidator thereof shall, as soon as they shall  
“come to the hands of such official liquidator, be deposited by  
“him in the Bank of England (*n*) for the purpose of being pre-  
“sented by the bank for acceptance and payment, or for  
“payment only, as the case may be.”—“Rules under Com-  
panies Act, 1862,” r. 37.

*Rules under Companies Act, 1862, rule 41.*

“All moneys, bills, notes, and other securities paid and  
“delivered into the Bank of England (*n*), shall be placed to  
“the credit of the account of the official liquidator of the  
“company; and orders for any such payment and delivery  
“shall direct the same accordingly.”—“Rules under Companies  
Act, 1862,” r. 41.

*Rules under Companies Act, 1862, rule 36.*

“If any official liquidator shall not pay all the moneys  
“received by him into the Bank of England (*n*), to the ac-  
“count of the official liquidator of the company, within

" of Bank £3 per Cent. Annuities, Reduced £3 per Cent. Annuities, New £3 per Cent. Annuities, or New £2 10s. per Cent. Annuities, in the name of the official liquidator, or in the purchase of exchequer bills. All such investments shall be made by the Bank of England (*o*), upon a request signed by the official liquidator, and countersigned by the chief clerk of the Judge, and which request shall be a sufficient authority for debiting the account with the purchase money; and such exchequer bills, and in case of an exchange thereof any new exchequer bills, shall be retained by or deposited with the Bank of England (*o*), in the name or on behalf of the official liquidator; and such annuities or exchequer bills shall not afterwards be sold or transferred or otherwise dealt with except upon a direction for that purpose, signed by the official liquidator, and countersigned by the chief clerk of the Judge, or under an order to be made by the Judge."—  
 " Rules under Companies Act, 1862," r. 43.

A form of request to invest cash in Government stock or exchequer bills is provided (*p*).

" All dividends and interest to accrue due upon any such annuities, shall from time to time be received by the Bank of England (*q*), under a power of attorney to be executed by the official liquidator, and placed to the credit of the account of such official liquidator; and such of the exchequer bills as shall from time to time be in course of payment, shall be delivered by the Bank of England (*q*) to one of their cashiers,

*Rules under Companies Act, 1862, rule 44.*

(*o*) Or by any bank substituted by order of the Court for the Bank of England. See "County Court Rules, 1875," Order xxxix. *ante*, p. 1120.

(*p*) The Form in question is as follows:—

" No. 44. *Request to invest Cash in Government Stock or Exchequer Bills.*  
 " [Rule 43.]

" In the matter, &c.

" To the Governor and Company of the Bank of England.

" Gentle men,

" It appearing that the sum of £                      cash is standing to the credit of the account of the official liquidator of the above-named Company, you are hereby requested to invest the sum of £                      , part thereof, in the purchase of Bank £3 per cent. annuities [*or*, reduced £3 per cent. annuities, *or*, new £3 per cent. annuities, *or*, new £2 10s. per cent. annuities] in the name of R. P. H., of &c., the official liquidator of the said Company, [*or*, in the purchase of exchequer bills, and to deposit such exchequer bills in the Bank of England, in the name and on behalf of the said official liquidator.] The said annuities [*or*, exchequer bills] are not to be sold, transferred, or otherwise dealt with, except upon a direction for that purpose signed by the official liquidator of the said Company, and countersigned by the chief clerk of the Master of the Rolls [*or*, Vice-Chancellor                      ], or under an Order to be made by the said judge.

" Dated this                      day of                      , 186                      .

" I am, Gentlemen,

" Your most obedient servant,

" R. P. H., Official Liquidator.

" Countersigned,

" G. H., Chief Clerk of the Master of

" the Rolls [*or*, Vice-Chancellor

"                      ],"

(*q*) Or in any bank substituted by order of the Court for the Bank of England. See "County Court Rules, 1875," Order xxxix. *ante*, p. 1120.

Official liquidator to file all documents relating to winding-up.

*Rules under Companies Act, 1862, rule 58.*

“ who is to receive the interest due thereon, and exchange the same for new bills, in case such new bills are issued, or otherwise to receive the principal and interest due on such of the said bills, so in course of payment, as cannot be exchanged, and pay the said interest, or principal and interest, as the case may be, into the Bank of England (*qq*) to the credit of the account of the official liquidator of the company.”—“ Rules under Companies Act, 1862,” r. 44.

The official liquidator is required, by the following rule, to file all documents relating to the winding-up :—

“ All orders, exhibits, admissions, memorandums, and office copies of affidavits, examinations, depositions, and certificates, and all other documents relating to the winding-up of any company, shall be filed by the official liquidator, as far as may be, in one continuous file, and such file shall be kept by him or otherwise, as the Judge may from time to time direct. Every contributory of the company, and every creditor thereof whose debt or claim has been allowed, shall be entitled, at all reasonable times, to inspect such file free of charge, and, at his own expense, to take copies or extracts from any of the documents comprised therein, or to be furnished with such copies or extracts at a rate not exceeding three halfpence per folio of seventy-two words ; and such file shall be produced in Court, or before the Judge, and otherwise, as occasion may require.”—“ Rules under Companies Act, 1862,” r. 58.

The “ Rules under Companies Act, 1862,” provide as follows :—

Official liquidator to make up books of company and

“ The official liquidator shall, with all convenient speed after he is appointed, proceed to make up, continue, complete, and rectify the books of account of the company ; and shall

"notice to such parties (if any) as the Judge shall direct, be  
 "passed and verified in the same manner as receivers' accounts."  
 —"Rules under Companies Act, 1862," r. 19.

(l.) *The Appointment and Duties of a Solicitor to the Official Liquidator.*

The appointment of a solicitor to the official liquidator is provided by the following section of "The Companies Act, 1862":—

"The official liquidator may, with the sanction of the Court, appoint a solicitor or law agent to assist him in the performance of his duties."—25 & 26 Vict. c. 89, s. 97.

A form of sanction of appointment of solicitor to official liquidator is provided (r).

The duties of a solicitor to an official liquidator are indicated by the following rule:—

"The solicitor of the official liquidator shall conduct all such proceedings as are ordinarily conducted by solicitors of the Court; and where the attendance of his solicitor is required on any proceeding in Court or chambers, the official liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor, or the Judge shall direct him to attend."—"Rules under Companies Act, 1862," r. 68.

May appoint a solicitor to assist him in discharge of his duties.  
*The Companies Act, 1862, s. 97.*

Form of sanction of appointment of solicitor and appointment.

Duties of solicitor to official liquidator.

*Rules under Companies Act, 1862, rule 68.*

(m.) *Attendance of the Proceedings by Persons obtaining Leave to Attend.*

"The Rules under Companies Act, 1862," provide that the creditors and contributories may attend the winding-up proceedings before the Judge:—

"Every person, for the time being, on the list of contributories of the company, left at the chambers of the Judge by the official liquidator, and every person having a debt or claim against the company, allowed by the Judge, shall be at liberty, at his own expense, to attend the proceedings before the Judge, and shall be entitled, upon payment of the costs

Creditors and contributories may by leave attend proceedings to wind up.

*Rules under Companies Act, 1862, rule 60.*

(r) The Form in question is as follows:—

"No. 12. *Sanction of Appointment of Solicitor to Official Liquidator, and Appointment.* [25 & 26 Vict. c. 89, s. 97.]

"In the matter, &c.

"The Master of the Rolls [or, Vice-Chancellor] sanctions the official liquidator appointing a solicitor, to assist him in the performance of his duties.

"G. H., Chief Clerk.

"I hereby appoint Messrs. C. and D., of &c., to be my solicitors in this matter.

"Dated this            day of            , 186            "R. P. H., Official Liquidator."

“ occasioned thereby, to have notice of all such proceedings as  
 “ he shall by written request desire to have notice of ; but if  
 “ the Judge shall be of opinion that the attendance of any  
 “ such person upon any proceeding has occasioned any addi-  
 “ tional costs which ought not to be borne by the funds of the  
 “ company, he may direct such costs, or a gross sum in lieu  
 “ thereof, to be paid by such person ; and such person shall  
 “ not be entitled to attend any further proceedings until he  
 “ has paid the same.”—“ Rules under Companies Act, 1862,”  
 r. 60.

Judge may  
 appoint any  
 one or more  
 of them to  
 represent the  
 rest upon  
 certain  
 questions.

*Rules under  
 Companies  
 Act, 1862,  
 rule 61.*

The Judge may, from time to time, appoint any one or more of the contributories, or creditors, to represent before him, at the expense of the company, all or any class of the contributories or creditors upon any question as to a compromise with any of the contributories or creditors. On this subject “ The Rules under Companies Act, 1862,” provide as follows :—

“ The Judge may from time to time appoint any one or  
 “ more of the contributories or creditors, as he thinks fit, to  
 “ represent before him, at the expense of the company, all or  
 “ any class of the contributories or creditors, upon any question  
 “ as to a compromise with any of the contributories or creditors,  
 “ or in and about any other proceedings before him relating to  
 “ the winding-up of the company, and may remove the person  
 “ or persons so appointed. In case more than one person shall  
 “ be so appointed, they shall unite in employing the same  
 “ solicitor to represent them.”—“ Rules under Companies Act,  
 1862,” r. 61.

No contribu-  
 tory to be  
 entitled to  
 attend pro-

“ No contributory or creditor shall be entitled to attend  
 “ any proceedings at the chambers of the Judge, unless and  
 “ until he has entered in a book to be kept there for that  
 “ purpose his name and address, and the name and address of



(n.) *General Course of Proceedings subsequent to a Winding-up Order.*

In the opening portion of this section, in dealing with the general constitution of the County Court as a tribunal under "The Companies Acts," in winding-up matters the powers of the Court to make orders at chambers have already been mentioned (*ss*), as have also the general directions contained in the rules as to the form and the drawing up of Orders in Chambers (*t*).

Authority to proceed in chambers.

So soon as the petition for a winding-up has been heard, and an order made thereon, the subsequent matters connected with the winding-up become, for the most part, the subjects of proceedings in chambers. The following rules relate generally to the course of proceedings in chambers.

Proceedings after a winding-up order usually conducted in chambers.

Affidavits intended to be used *after* an order for winding-up must comply with the following rule:—

Affidavits intended to be used *after* winding-up order.

"Where an Order shall have been made for the winding-up of any company, any person intending to use any affidavit in any proceeding under such Order, shall file the same in the Record and Writ Clerks' Office, and give notice thereof to the official liquidator. The person, other than the official liquidator, filing the affidavit shall not be required to take an office copy thereof, but an office copy thereof shall be taken by the official liquidator, and he shall produce the same at the hearing of any application or proceeding upon which it is intended to be used, unless the Judge shall otherwise direct."—"Rules under Companies Act, 1862," r. 55.

Rules under Companies Act, 1862, rule 55.

Service of proceedings upon contributories and creditors is regulated by the following rules:—

Service of proceedings upon contributories and creditors.

"Services upon contributories and creditors shall be effected (except when personal service is required) by sending the notice, or a copy of the summons or order or other proceeding, through the post in a pre-paid letter, addressed to the solicitor of the party to be served (if any) or otherwise to the party himself at the address entered or last entered pursuant to the preceding rule; or if no such entry has been made, then, if a contributory, to his last known address or place of abode; and if a creditor, to the address given by him, pursuant to the foregoing rule 20; and such notice, or copy summons, order, or other proceeding, shall be considered as served at the time the same ought to be delivered in the due course of delivery by the post-office, and notwithstanding the same may be returned by the post-office."—"Rules under Companies Act, 1862," r. 63.

Rules under Companies Act, 1862, rule 63.

"No service under these rules shall be deemed invalid by reason that the christian name, or any of the christian names

Rules under Companies Act, 1862, rule 64.

(ss) *Ante*, p. 1123.

(t) *Ib.*

“ of the person on whom service is sought to be made, has been  
 “ omitted, or designated by initial letters, in the list of con-  
 “ tributories, or in the summons, order, notice, or other docu-  
 “ ment wherein the name of such contributory or creditor is  
 “ contained, provided the judge is satisfied that such service  
 “ is in other respects sufficient.”—“ Rules under Companies  
 Act, 1862,” r. 64.

Costs to be  
 in all cases  
 taxed.

*Rules under  
 Companies  
 Act, 1862,  
 rule 72.*

With regard to the taxation of costs, the “ Rules under Com-  
 panies Act, 1862,” provide as follows :—

“ Where an order is made in Court or Chambers for payment  
 “ of any costs, the order shall direct the taxation thereof by  
 “ the taxing master ; except in cases where a gross sum in lieu  
 “ of taxed costs is fixed by the order, in accordance with the  
 “ 37th rule of the 40th of the Consolidated General Orders.”—  
 “ Rules under Companies Act, 1862,” r. 72.

(o.) *Orders for the Inspection of Books, &c.*

Order for  
 inspection of  
 books and  
 papers as  
 soon as wind-  
 ing-up order  
 has been  
 made.

*The Com-  
 panies Act,  
 1862, s. 156.*

As soon as an order to wind up has been made, the Court  
 may make an order for the inspection of books and papers of  
 the company or society which is in course of winding up :—

“ Where an order has been made for winding up a company  
 “ by a Court or subject to the supervision of the Court, the  
 “ Court may make such order for the inspection by the creditors  
 “ and contributories of the company of its books and papers as  
 “ the Court thinks just, and any books and papers in the pos-  
 “ session of the company may be inspected by creditors or con-  
 “ tributories in conformity with the order of the Court, but  
 “ not further or otherwise.”—25 & 26 Vict. c. 89, s. 156.

"tribution made before such debts are proved."—25 & 26 Vict. c. 89, s. 107.

*The Companies Act, 1862, s. 107.*

The "Rules under Companies Act, 1862," provide as follows:—

"For the purpose of ascertaining the debts and claims due from the company, and of requiring the creditors to come in and prove their debts or claims, an advertisement shall be issued at such time as the Judge shall direct; and such advertisement shall fix a time for the creditors to send their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors (if any) to the official liquidator, and appoint a day for adjudicating thereon."—"Rules under Companies Act, 1862," r. 20 (*t*).

Advertisement for creditors to be issued.

*Rules under Companies Act, 1862, rule 20.*

A form of advertisement for creditors under the above rule is provided (*u*).

Form of advertisement.

As regards the debts which may be proved against a company which is being wound up, it is enacted:—

What debts may be proved.

"In the event of any company being wound up under this Act, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as is possible, of the value of all such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value."—25 & 26 Vict. c. 89, s. 158.

*The Companies Act, 1862, s. 158.*

"The value of such debts and claims as are made admissible to proof by the 158th section of the said Act, shall, so far as is possible, be estimated according to the value thereof at the date of the order to wind up the company."—"Rules under Companies Act, 1862," r. 25.

Value to be placed on contingent debts, &c.

*Rules under Companies Act, 1862, rule 25.*

"Interest on such debts and claims as shall be allowed shall be computed, as to such of them as carry interest, after the

Interest on debts.

(*t*) See *ante*, Rule 53, p. 1124, for general provision as to advertisements.

(*u*) The Form in question is as follows:—

"No. 16. *Advertisement for Creditors*. [Rule 20.]

"In the matter of, &c.

"The creditors of the above-named Company are required, on or before the day of , 186 , to send their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors, if any, to R. P. H., of , the official liquidator of the said Company, and, if so required by notice in writing from the said official liquidator, are by their solicitors to come in and prove their said debts or claims at the chambers of the Master of the Rolls [*or*, the Vice-Chancellor], in the Rolls Yard, Chancery Lane, [*or*, at No. Lincoln's Inn], in the County of Middlesex, at such time as shall be specified in such notice, or in default thereof, they will be excluded from the benefit of any distribution made before such debts are proved.

"The day of , 186 , at o'clock in the noon, at the said chambers, is appointed for hearing and adjudicating upon the debts and claims.

"Dated this day of , 186 ,

"G. H., Chief Clerk."

*Rules under  
Companies  
Act, 1862,  
rule 26.*

“ rate they respectively carry ; any creditor whose debt or  
“ claim so allowed does not carry interest, shall be entitled to  
“ interest, after the rate of £4 per centum per annum, from the  
“ date of the order to wind up the company, out of any assets  
“ which may remain after satisfying the costs of the winding  
“ up, the debts and claims established, and the interest of such  
“ debts and claims as by law carry interest.”—“ Rules under  
Companies Act, 1862,” r. 26.

*Debts and  
claims to be  
investigated  
by official  
liquidator.*

The official liquidator must investigate the debts and claims sent to him, as is provided by the following rule of the “ Rules under Companies Act, 1862 ” :—

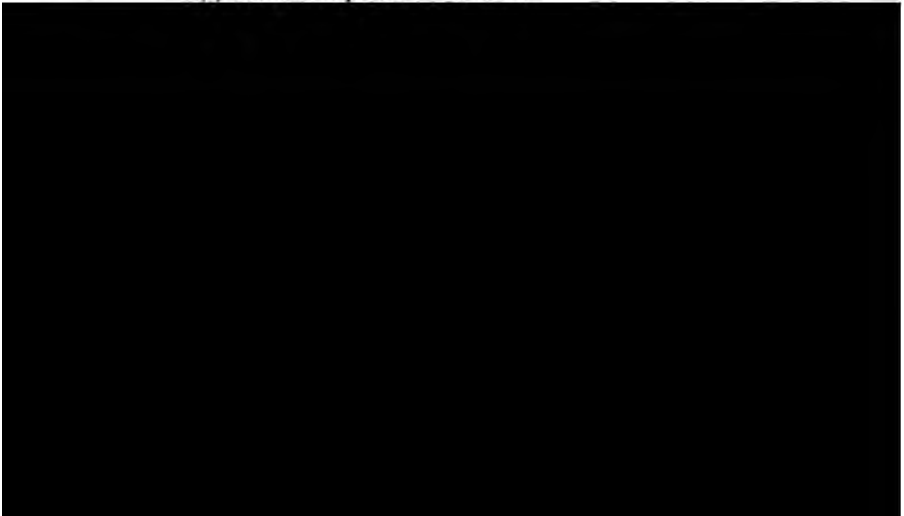
*Rules under  
Companies  
Act, 1862,  
rule 22.*

“ The official liquidator shall investigate the debts and  
“ claims sent in to him, and ascertain, so far as he is able, which  
“ of such debts and claims are justly due from the company ;  
“ and he shall make out and leave at the chambers of the  
“ Judge a list of all the debts and claims sent in to him, dis-  
“ tinguishing which of the debts and claims, or parts of debts  
“ and claims so claimed, are, in his opinion, justly due and  
“ proper to be allowed without further evidence, and which of  
“ them, in his opinion, ought to be proved by the creditors ;  
“ and he shall make and file, prior to the time appointed for  
“ adjudication, an affidavit, setting forth which of the debts  
“ and claims in his opinion are justly due and proper to be  
“ allowed without further evidence, and stating his belief that  
“ such debts and claims are justly due and proper to be  
“ allowed, and the reasons for such belief.”—“ Rules under  
Companies Act, 1862,” r. 22.

*Form of  
affidavit of  
official liqui-*

A form of affidavit of official liquidator as to debts and claims is provided (x), and also a form of exhibit referred to in

(x) The form in question is as follows :—



the said affidavit (y).

On the day appointed for adjudicating upon debts and claims, the Judge may either allow or disallow them upon the affidavit of the official liquidator, as is provided by the following rule :—

“ At the time appointed for adjudicating upon the debts and claims, or at any adjournment thereof, the Judge may either allow the debts and claims upon the affidavit of the official liquidator, or may require the same, or any of them, to be proved by the claimants, and adjourn the adjudication thereon to a time to be then fixed ; and the official liquidator shall give notice to the creditors whose debts or claims have been so allowed, of such allowance.”—“ Rules under Companies Act, 1862,” r. 23.

A form of notice to a creditor of the allowance of a debt is provided (z).

(y) The Form in question is as follows :

“ No. 18. *Exhibit referred to in Affidavit No. 17.*

“ A.

“ In the matter, &c.

“ List of debts and claims of which the particulars have been sent in to the official liquidator.

“ This paper writing, marked A., was produced and shown to R. P. H., and is the same as is referred to in his affidavit, sworn before me this                      day of                      , 186                      .

“ W. B., &c.

“ *First Part.*—Debts and claims proper to be allowed without further evidence.

Serial No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt or Claim.	Amount Claimed.	Amount proper to be allowed.	Reasons for belief that amounts are proper to be allowed.
				£ s. d.	£ s. d.	

“ *Second Part.*—Debts and claims which ought to be proved by the creditors.”

Serial No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt or Claim.	Amount Claimed.		
				£	s.	d.

(z) The Form in question is as follows :—

“ No. 19. *Notice to Creditor of Allowance of Debt.* [Rule 23.]

“ In the matter, &c.

“ [Place and date.]

“ Sir,

“ The debt claimed by you in this matter has been allowed by the Judge at

dator as to debts and claims ; and of exhibit thereto.

Judge may either allow or disallow debts and claims upon affidavit of official liquidator.

*Rules under Companies Act, 1862, rule 23.*

Form of notice to creditors of allowance of debt.

Creditors need not attend on day fixed for adjudication on claims unless specially required to do so.

*Rules under Companies Act, 1862, rule 21.*

Notice to creditors whose debts or claims have not been allowed.

*Rules under Companies Act, 1862, rule 24.*

Form of notice to creditors, and of affidavit of proof.

The creditors need not attend upon the day fixed for adjudication on claims, unless they receive *special* notice from the official liquidator to do so :—

“ The creditors need not attend upon the adjudication, nor “ prove their debts or claims, unless they are required to do so “ by notice from the official liquidator ; but upon such notice “ being given, they are to come in and prove their debts or “ claims within a time to be therein specified.”—“ Rules under Companies Act, 1862,” r. 21.

The official liquidator is required, after the adjudication on claim has taken place on the day fixed for it, to give notice requiring proof of their debts to those creditors whose debts or claims have not been allowed :—

“ The official liquidator shall give notice to the creditors “ whose debts or claims have not been allowed upon his affi- “ davit, that they are required to come in and prove the same “ by a day to be therein named, being not less than four days “ after such notice, and to attend at a time to be therein named, “ being the time appointed by the advertisement, or by adjourn- “ ment (as the case may be) for adjudicating upon such debts “ and claims.”—“ Rules under Companies Act, 1862,” r. 24.

A form of notice to creditors under the above rule is provided (a). Likewise a form of affidavit of creditor in proof of debt (b).

“ the sum of £ . . . [If part only allowed add, if you claim to have a “ larger sum allowed, you are hereby required to come in and prove the further “ amount claimed, &c., as in next Form.]

“ To Mr. P. R.”

“ I am, &c.,

“ R. P. II., Official Liquidator.

(a) The Form in question is as follows :—

As regards the costs of creditors coming in to prove their debts or claims pursuant to notice from the official liquidator, it is provided as follows :—

Costs of proving debts and claims.

“Such creditors as come in and prove their debts or claims pursuant to notice from the official liquidator, shall be allowed their costs of proof, in the same manner as in the case of debts proved in a cause.”—“Rules under Companies Act, 1862,” r. 27.

Rules under Companies Act, 1862, rule 27.

The result of the adjudication upon debts and claims is required to be stated in a certificate, as provided by the following rule :—

Result of adjudication upon debts and claims to be stated.

“The result of the adjudication upon debts and claims shall be stated in a certificate to be made by the chief clerk, and certificates as to any of such debts and claims may be made from time to time. All such certificates shall state whether the debts or claims are allowed or disallowed, and whether allowed as against any particular assets, or in any other qualified or special manner.”—“Rules under Companies Act, 1862,” r. 28.

Rules under Companies Act, 1862, rule 28.

A form of certificate as to debts and claims is provided (c), together with schedules thereto.

Form of certificate as to debts and claims.

*“exhibit a bill of parcels, and verify the reasonableness of the charges, as in proving a debt in a suit.”*

“2. I have not, nor hath, nor have any person or persons by my order, or to my knowledge or belief, for my use received the said sum of £ or any part thereof, or any security or satisfaction for the same or any part thereof, [if any security add,] except the said [describe the security], hereinbefore mentioned or referred to.

“Sworn, &c.”

(c) The Form in question is as follows :—

“No. 22. Certificate of Chief Clerk, as to Debts and Claims. [Rule 28.]

“In the matter, &c.

“In pursuance of the directions given to me by the Master of the Rolls [or, Vice-Chancellor], I hereby certify that the result of the adjudication upon debts and claims against the above-named Company, brought in pursuant to the advertisement issued in that behalf, dated the day of 186 , so far as such adjudication has up to the date of this certificate been proceeded with, is as follows :—

“The debts and claims which have been allowed are set forth in the first schedule hereto, and, with the interest thereon and costs mentioned in the said schedule, are due to the persons therein named, and amount altogether to £

“I have in the first part of the said schedule set forth such of the said debts and claims as carry interest, and the interest thereon has been computed after the rate they respectively carry down to the date of the certificate.

“I have in the second part of the said schedule set forth such of the said debts and claims as do not carry interest, and the interest thereon has been computed at the rate of £4 per cent. per annum, from the day of , 186 , being the date of the said Order to wind-up the Company, down to the date of this certificate.

“The claims set forth in the second schedule hereto have been brought in by the persons therein named, and have been disallowed.

“The evidence produced, &c.

Notice to  
creditors to  
attend to  
receive debt.

Creditors who have duly proved their debts must have notice given them to attend and receive the amounts due to

" THE FIRST SCHEDULE ABOVE REFERRED TO.

" *First Part.*—Debts and Claims which carry interest.

No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt.	Total due.
1.	J. L.	29 Street, London, Stationer. Principal . . . . Interest at £ per cent. per annum, (less Property Tax) from 188 to the date of this Certificate . . Costs of Proof . .	On Bill of Ex- change, dated &c. £   £ £  Total first Part. £	£ s. d.

" *Second Part.*—Debts and Claims which do not carry interest.

No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt.	Interest on Principal (less Property Tax).	Total due.
40	W. P.	15 Street, London. Coal Merchant. Principal . . . . Costs of Proof . . .	Goods sold. £50 0 0 2 0 0	£ s. d. 2 0 0 } 54 0 0	£ s. d. 54 0 0



them. The form of notice to creditors to attend to receive debt is provided (d).

(q.) *Settling List of Contributories.*

The nature of the liability of a contributory to a company is dealt with by the following enactment :—

“The liability of any person to contribute to the assets of a company under this Act, in the event of the same being wound up, shall be deemed to create a debt (in England and Ireland of the nature of a specialty) accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability; and it shall be lawful in the case of the bankruptcy of any contributory to prove against his estate the estimated value of his liability to future calls as well as calls already made.”—25 & 26 Vict. c. 89, s. 75.

The persons who are liable as contributories to a company or society which is being wound up are defined as follows :—

Section 74 of the Act has already (e) been set out, and contains a general definition of the term “contributory.”

“If any contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives, heirs, and devisees shall be liable in

Nature of liability of contributories.

*The Companies Act, 1862, s. 75.*

What persons are liable as contributories.

Meaning of “contributory.”

On death of contributory his personal representatives, heirs, and devisees represent him.

(d) The Form in question is as follows :—

“No. 23. *Notice to Creditor to attend to receive Debt.* [Rule 28.]

“In the matter, &c.

“Sir,  
“Upon application at my office, No. \_\_\_\_\_, Street, Middlesex, on \_\_\_\_\_  
“or after the \_\_\_\_\_ instant, between the hours of ten and four o’clock, you  
“may receive a cheque for the amount of your debt, allowed in this matter as  
“under :—

“Principal . . . . .	£
“Interest . . . . .	£
“Costs of Proof . . . . .	£
	£

“If you cannot attend personally, the cheque will be delivered to your Order, upon your filling up and signing the subjoined form.

“The bills or securities (if any) held by you must be produced at the time of such application.

“Dated this \_\_\_\_\_ day of \_\_\_\_\_, 186 .

“I am, &c.,

“To Mr. S. T.

“R. P. H., Official Liquidator.  
“[Form of Order].

“Sir,

“Please to deliver to W. R. the cheque for £ \_\_\_\_\_ referred to in the above  
“letter as payable to me.

“S. T., Creditor.

“To Mr. R. P. H., Official }  
“Liquidator of the }  
“Company.” }

(e) *Ante*, p. 1119.

*The Companies Act, 1862, s. 76.*

Who represents a bankrupt contributory.

*The Companies Act, 1862, s. 77.*

If a female contributory marries, her husband to be deemed a contributory.

*The Companies Act, 1862, s. 78.*

Uncalled capital of company limited by guarantee to

“ a due course of administration to contribute to the assets of the company in discharge of the liability of such deceased contributory, and such personal representatives, heirs, and devisees shall be deemed to be contributories accordingly.”—25 & 26 Vict. c. 89, s. 76.

“ If any contributory becomes bankrupt, either before or after he has been placed on the list of contributories, his assignees (*f*) shall be deemed to represent such bankrupt for all the purposes of the winding-up, and shall be deemed to be contributories accordingly, and may be called upon to admit to proof against the estate of such bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any monies due from such bankrupt in respect of his liability to contribute to the assets of the company being wound up ; and for the purposes of this section any person who may have taken the benefit of any Act for the relief of insolvent debtors before the eleventh day of October, One thousand eight hundred and sixty-one, shall be deemed to have become bankrupt.”—25 & 26 Vict. c. 89, s. 77.

“ If any female contributory marries, either before or after she has been placed on the list of contributories, her husband shall during the continuance of the marriage be liable to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be deemed to be a contributory accordingly.”—25 & 26 Vict. c. 89, s. 78.

As regards the liability of contributories, the following enactment may be noted here :—

“ When an order has been made for winding up a company limited by guarantee, and having a capital divided into shares, any share-capital that may not have been called up

“as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.”—25 & 26 Vict. c. 89, s. 154.

*The Companies Act, 1862, s. 154.*

When it has been ascertained who are liable as contributories, a list of them is made out. This is required by the following provisions :—

List of contributories to be made out.

“As soon as may be after making an order for winding up the company, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where such rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities.”—25 & 26 Vict. c. 89, s. 98.

List of contributories to be settled.

*The Companies Act, 1862, s. 98.*

“In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or being liable to the debts of others; it shall not be necessary, where the personal representative of any deceased contributory is placed on the list, to add the heirs or devisees of such contributory, nevertheless such heirs or devisees may be added as and when the Court thinks fit.”—25 & 26 Vict. c. 89, s. 99.

*The Companies Act, 1862, s. 99.*

“The official liquidator shall, with all convenient speed after his appointment, or at such time as the Judge shall direct, make out and leave at the chambers of the Judge a list of the contributories of the company; and such list shall be verified by the affidavit of the official liquidator, and shall, so far as is practicable, state the respective addresses of, and the number of shares or extent of interest to be attributed to each such contributory, and distinguish the several classes of contributories. And such list may from time to time, by leave of the Judge, be varied or added to, by the official liquidator.”—“Rules under Companies Act, 1862,” r. 29.

*Rules under Companies Act, 1862, rule 29.*

A form of affidavit in support of the list of contributories is provided (*h*).

Form of affidavit in support of list of contributories.

(*h*) The Form in question is as follows:—

“No. 24. *Affidavit in support of List of Contributories.* [Rule 29.]

“In Chancery.

“In the matter, &c.

“I, R. P. H., of &c., the official liquidator of the above-named Company, make oath, and say as follows:—

“1. The paper writing now produced and shown to me, and marked with the letter A, contains a list of the contributories of the said Company, made out by me from the books and papers of the said Company, together with their respective addresses, and the number of shares [or, extent of interest], to be attributed to each; and such list is, to the best of my knowledge, information and belief, a true and accurate list of the contributories of the said Company, so far as I have been able to make out and ascertain the same.

“2. I have, in the first part of the said list marked A, distinguished the persons who are contributories in their own right.

“3. I have, in the second part of the said list marked A, distinguished the persons who are contributories as being representatives of, or being liable to the debts of others.

“Sworn, &c.”

Form of list  
of contribu-  
tories.

Form of sup-  
plemental  
list of con-  
tributories.

A form of list of contributories referred to in such affidavit is also provided (*i*). There is, likewise, a form of supplemental list of contributories and affidavit in support (*k*).

(*i*) The Form in question is as follows:—

“ No. 25. *List of Contributories referred to in Form No. 24.*

“ A.

“ In the matter, &c.

“ This list of contributories marked A, was produced and shown to R. P. H.,  
“ and is the same list of contributories as is referred to in his affidavit, sworn  
“ before me this            day of            , 186 .

“ W. B., &c.

“ *First Part.*—Contributories in their own right.

Serial No.	Name.	Address.	Description.	In what Character included.	Number of Shares [or, extent of interest].

“ *Second Part.*—Contributories as being Representatives of, or liable to the  
“ debts of others.”

Serial No.	Name.	Address.	Description.	In what Character included.	Number of Shares [or, extent of interest].

The list of contributories when completed must be left at the chambers of the Judge, and appointment obtained to settle the same, as is provided by the following rule :—

“ Upon the list of contributories being left at the chambers of the Judge, the official liquidator shall obtain an appointment for the Judge to settle the same, and shall give notice in writing of such appointment to every person included in such list, and stating in what character, and for what number of shares, or interest such person is included in the list ; and, in case any variation or addition to such list shall at any time be made by the official liquidator, a similar notice in writing shall be given to every person to whom such variation or addition applies. All such notices shall be served four clear days before the day appointed to settle such list, or such variation or addition.”—“ Rules under Companies Act, 1862,” r. 30.

Appointment to settle list of contributories to be obtained.

Rules under Companies Act, 1862, rule 30.

A form of affidavit of service of the notice mentioned in the above rule is provided (I), and of the schedule therein referred

Form of affidavit of service of notice to persons on list.

“ to R. P. H., and is the same supplemental list of contributories as is referred to in his affidavit, sworn before me this                      day of                      186 .

“ W. B., &c.

“ Note.—The supplemental list is to be made out in the same form as the original list, Form No. 25.”

(I) The Form in question is as follows :—

“ No. 27. *Affidavit of Service of Notice.* [Rule 30.]

“ In Chancery.

“ In the matter, &c.

“ I, W. S., of &c., clerk to Messrs. C. and D., of &c., the solicitors of the official liquidator of the above-named Company, make oath, and say as follows :—

“ 1. The first six columns of the schedule now produced and shown to me, and marked with the letter A, contain a true copy of the list of contributories of the said Company, made out and left at the chambers of the Master of the Rolls [or, Vice-Chancellor                      ], by the said official liquidator, on the                      day of                      , 186 , and now on the file of proceedings of the said Company, as I know from having, on the                      day of                      , 186 , examined and compared the said schedule with the said list ; and I have, in the seventh column of the said schedule marked A, set forth the names and addresses of the solicitors who have entered appearances for any of the contributories named in the said list.

“ 2. I did, on the                      day of                      , 186 , in the manner hereinafter mentioned, serve a true copy of the notice now produced and shown to me, and marked B, upon each of the respective persons whose names, addresses, and descriptions appear in the second, third, and fourth columns of the said schedule marked A, except that in the tabular form at the foot of such copies I respectively inserted the number on list, name, address, description, in what character included, and number of shares [or, extent of interest] of the person on whom such copy of the said notice was served, in the same words and figures as the same particulars are set forth in the said schedule marked A.

“ 3. I served the said respective copies of the said notice, by putting such copies respectively, duly addressed to such persons respectively or their solicitors, according to their respective names and addresses appearing in the said schedule marked A, and, with the proper postage-stamps affixed thereto as prepaid letters, into the Post Office receiving-house, No.                      Street, in the county of                      , between the hours of

“ and                      of the clock in the                      noon of the said                      day of                      “ Sworn, &c.”

Form of  
notice to con-  
tributories of  
appointment  
to settle list  
of contribu-  
tories.

to (m). There is also a form of notice to contributories of ap-  
pointment to settle list of contributories (n).

(m) The Form in question is as follows :—

“ No. 28. *The Schedule Referred to in Form No. 27.*

“ A.

“ In the matter, &c.

“ This schedule marked A was produced and shown to W. S., and is the  
“ same schedule as is referred to in his affidavit, sworn before me, this  
“ day of , 186 .

“ W. B., &c.

1. Number on List.	2. Name.	3. Address.	4. Description.	5. In what Cha- racter included.	6. Number of Shares [or, extent of Interest].	7. Names and Addresses of So- licitors who have entered appearances, and been served with a copy of the notice referred to in the affidavit of W. S., to which this Schedule is an exhibit.

(n) The Form in question is as follows :—

“ No. 26. *Notice to Contributories of Appointment to settle List of Contribu-  
“ tories.* [Rule 30.]

“ In the matter, &c.

“ The Master of the Rolls [or, Vice-Chancellor], has appointed the

“ day of , 186 , at of the clock in the noon at  
“ his chambers, in the Rolls Yard, Chancery Lane [or, at No. Lincoln's

The result of the settlement of the list of contributories is embodied in a certificate, as required by the following rule :—

“The result of the settlement of the list of contributories shall be stated in a certificate by the chief clerk ; and certificates may be made from time to time for the purpose of stating the result of such settlement down to any particular time, or as to any particular person, or stating any variation of the list.”—“Rules under Companies Act, 1862,” r. 31.

A form of certificate under the above rule is provided (o).

The list as originally settled may by rule 29 just set out, be subsequently varied, on the application of the liquidator or of any interested person.

Result of settlement of list of contributories to be embodied in a certificate.

Rules under Companies Act, 1862, rule 31.

Form of certificate.

Variation of list.

(o) The Form in question is as follows :—

“No. 31. *Certificate of Chief Clerk of Settlement of the List of Contributories.*”  
“ [Rule 31.]

“In the matter, &c.

“In pursuance of the directions given to me by the Master of the Rolls [or, Vice-Chancellor], I hereby certify that the result of the settlement of the list of contributories of the above-named Company, made out and left at the chambers of the said Judge by the official liquidator of the said Company on the day of 186 , pursuant to the above statute and the general order of this Court in that behalf, so far as the said list has been settled up to the date of this certificate is as follows :—

“1. The several persons whose names are set forth in the second column of the first schedule hereto, have been included in the said list of contributories as contributories of the said Company in respect of the number of shares [or, extent of interest] set opposite the names of such contributories respectively in the said schedule.

“I have in the first part of the said schedule distinguished such of the said several persons included in the said list, as are contributories in their own right.

“I have, in the second part of the said schedule, distinguished such of the said several persons included in the said list as are contributories, as being representatives of, or being liable to the debts of others.

“2. The several persons whose names are set forth in the second column of the second schedule hereto have been excluded from the said list of contributories.

“3. I have, in the seventh column of the said first and second schedules, set forth opposite the name of each of the said several persons respectively, the date when such person was included in or excluded from the said list of contributories.

“The evidence produced, &c.

“THE FIRST SCHEDULE ABOVE REFERRED TO.

“First Part.—Contributories in their own right.

Serial No. in List.	Name.	Address.	Description.	In what Character included.	Number of Shares [or, extent of interest].	Date when included in the List.

Form of order  
on application  
to vary list.

The form of an order on an application to vary list of contributories is provided (*p*).

(*r.*) *Calls on Contributories.*

Liability of  
contributories  
to calls.

Any person, whose name is inscribed on the list of contributories, is liable to have calls made upon him. These calls may be made either before or after it has been ascertained by the Court whether the assets of the society are sufficient to meet the liabilities. On this subject, "The Companies Act, 1862," provides as follows :—

"The Court may, at any time after making an order for winding up a company, and either before or after it has

" *Second Part.*—Contributories as being representatives of, or liable to the debts of others.

Serial No. in List.	Name.	Address.	Description.	In what Character included.	Number of Shares [or, extent of interest].	Date when included in the List.

" THE SECOND SCHEDULE ABOVE REFERRED TO.

Serial No. in List.	Name.	Address.	Description.	In what Character proposed to be included.	Number of Shares [or, extent of interest].	Date when excluded from the List.



"ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories, for the time being settled on the list of contributories to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and it may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same."—25 & 26 Vict. c. 89, s. 102.

*The Companies Act, 1862, s. 102.*

When it is desired to obtain an order under the above section, application must be made to the Judge under the following rule of the "Rules under Companies Act, 1862":—

"Every application to the Judge to make any call on the contributories or any of them, for any purpose authorised by the said Act, shall be made by summons, stating the proposed amount of such call; and such summons shall be served, four clear days at the least before the day appointed for making the call, on every contributory proposed to be included in such call; or if the Judge shall so direct, notice of such intended call may be given by advertisement."—*Rules under Companies Act, 1862,* r. 33.

Application to Judge to make a call.  
Mode of making this application.  
*Rules under Companies Act, 1862, rule 33.*

A form of summons is provided, and is set out in the footnote (g).

Form of summons.

There is also a form of advertisement of intended call (r),

Form of advertisement of intended call.

(g) The Form in question is as follows:—

"No. 34. *Summons for intended Call.* [Rule 33.]

"In the matter, &c.

"Let all parties concerned attend at my Chambers in the Rolls Yard, Chancery Lane [or, at No. , Lincoln's Inn], in the county of Middlesex, on day, the day of , 186 , at o'clock in the noon, on the hearing of an application on the part of the official liquidator of the above-named Company, that a call to the amount of £ per share may be made on all the contributories [or, if upon any particular class, specify the same] of the said Company.

"John Romilly, Master of the Rolls,

or,

"X. Y., Vice-Chancellor.

"This summons was taken out by A. & B., of , in the county of , solicitors for the said official liquidator.

"To Mr. A. B., of &c., a contributory of the said }  
"Company proposed to be included in the said call." }

(r) The Form in question is as follows:—

"No. 35. *Advertisement of Intended Call.* [Rule 33.]

"In the matter, &c.

"By direction of the Master of the Rolls [or, Vice-Chancellor ], notice is hereby given that the said Judge has appointed the day of , 186 , at o'clock in the noon, at his chambers in the Rolls Yard, &c., to make a call on all the contributories of the said Company [or, as the case may be], and that the official liquidator of the said Company proposes that such call shall be for £ per share. All persons interested are entitled to attend at such day, hour, and place, to offer objections to such call.

"Dated this day of , 186 .

"G. H., Chief Clerk."

Form of affidavit by official liquidator in support of call.

General order for a call.

Form.

A copy of order for call to be served on each contributory.

and of the affidavit by the official liquidator in support of proposal for a call (*s*).

Should the Court see fit, it will, on the hearing of the application, make a general order for a call.

The form of general order for a call is provided (*t*).

A copy of any order for a call must be served upon each contributory, together with a notice of what he owes :—

(*s*) The Form in question is as follows :—

" No. 33. *Affidavit of Official Liquidator in support of proposal for Call.*

" [Rule 33.]

" In Chancery.

" In the matter, &c.

" I, R. P. H., of &c., the official liquidator of the above-named Company, make oath, and say as follows :—

" 1. I have, in the schedule now produced and shown to me, and marked with the letter A, set forth a statement, showing the amount due in respect of the debts allowed against the said Company, and the estimated amount of the costs, charges, and expenses of and incidental to the winding-up the affairs thereof, and which several amounts form in the aggregate the sum of £ or thereabouts.

" 2. I have also in the said schedule set forth a statement of the assets in hand belonging to the said Company, amounting to the sum of £ and no more. There are no other assets belonging to the said Company, except the amounts due from certain of the contributories of the said Company, and, to the best of my information and belief, it will be impossible to realise in respect of the said amounts more than the sum of £ or thereabouts.

" 3. It appears by the chief clerk's certificate, dated the day of 188 , that persons have been settled on the list of contributories of the said Company, in respect of the total number of shares.

" 4. For the purpose of satisfying the several debts and liabilities of the said Company, and of paying the costs, charges, and expenses of and incidental to the winding-up the affairs thereof, I believe the sum of £ will be required, in addition to the amount of the assets of the said Company mentioned in the said schedule A, and the said sum of £ .

" 5. In order to provide the said sum of £ , it is necessary to make a call upon the several persons who have been settled on the list of contributories as before-mentioned, and having regard to the probability that some of such

"When any order for a call has been made, a copy thereof shall be forthwith served upon each of the contributories included in such call, together with a notice from the official liquidator specifying the amount or balance due from such contributory (having regard to the provisions of the said Act) in respect of such call; but such order need not be advertised unless, for any special reason, the Judge shall so direct."—  
 "Rules under Companies Act, 1862," r. 34.

*Rules under Companies Act, 1862, rule 34.*

The form of the notice to be served with such general order is duly provided (u).

Form of notice to be served with order for call.

If the contributories neglect to pay calls made upon them, payment may be enforced against them, as appears from the following rule:—

Enforcing payment of calls.

"At the time of making an order for a call, the further proceedings relating thereto shall be adjourned to a time subsequent to the day appointed for the payment thereof, and afterwards from time to time so long as may be necessary; and at the time appointed by any such adjournment, or upon a summons to enforce payment of the call, duly served, and upon proof of the service of the order and notice of the amount due, and non-payment, an order may be made for such of the contributories who have made default, or of such of them against whom it shall be thought proper to make such order, to pay the sum which by such former order and notice they were respectively required to pay, or any less sum which may appear to be due from them respectively."—  
 "Rules under Companies Act, 1862," r. 35.

*Rules under Companies Act, 1862, rule 35.*

A form of affidavit in support of application for order for payment of calls is provided (x); likewise of an order for pay-

Form of affidavit in support of application for order for payment of calls.

(u) The Form in question is as follows:—

"No. 37. Notice to be served with the General Order for a Call. [Rule 34.]

"In the Matter, &c.

"The amount due from you, A. B., in respect of the call made by the above [or, within] Order, is the sum of £ , which sum is to be paid by you into the Bank of England, to the account mentioned in the said Order. You can pay the same in person, or through a banker or other agent; but this notice and copy Order must be produced at the bank upon such payment, and the cashier of the bank will, upon receiving the same, deliver to you a certificate of the payment in, numbered , signed by the said cashier. In order to prevent proceedings being taken against you for non-payment, you must, immediately upon such payment in, cause written notice of the payment, and of the date thereof to be given to me as the official liquidator of the said Company, at my office, No. Street, in the County of Middlesex.

"Dated this day of 186 .

"To Mr. A. B."

"R. P. H., Official Liquidator.

(x) The Form in question is as follows:—

"No. 38. Affidavit in support of Application for Order for Payment of Call due from Contributories. [Rule 35.]

"In Chancery.

"In the matter, &c.

"I, R. P. H., of &c., the official liquidator of the above-named Company, make oath, and say as follows:—

"1. None of the contributories of the said Company whose names are set forth in the schedule hereunto annexed, marked A, have paid, or caused to be paid, the respective sums set opposite their respective names in the said



There is also a form of affidavit of service of order for payment of call (z).

The order directing payment of calls may direct payment to be into the Bank of England (a), or any branch thereof (a), and either to the account of the official liquidator or to the official liquidators, "The Companies Act, 1862," providing as follows :—

"The Court may order any contributory, purchaser, or other person from whom money is due to the company to pay the same into the Bank of England (a), or any branch thereof (a), to the account of the official liquidator instead of to the official liquidator, and such order may be enforced in the same manner as if it had directed payment to the official liquidator."—25 & 26 Vict. c. 89, s. 103.

On the same subject the "Rules under Companies Act, 1862," provide as follows :—

"All orders for payment of calls, balances, or other moneys due from any contributory or other person, shall direct the same to be paid into the Bank of England (a), to the account of the official liquidator of the company, unless, on account of the smallness of the amount or other cause, it shall, having regard to the amount of the security given by the official liquidator, be thought proper to direct payment thereof to the official liquidator. Provided that where any such order has been made directing payment of a specific sum into the Bank of England (a), in case it shall be thought proper for the purpose of enabling the official liquidator to issue execution or take other proceedings to enforce the payment thereof, or for any other reason, an order may, either before service of such former order, or after the time thereby fixed for payment, be made, without notice, for payment of the

Form of affidavit of service of order for payment of calls.

Order directing payment of calls may direct payment into Bank of England.

*The Companies Act, 1862, s. 103.*

*Rules under Companies Act, 1862, rule 38.*

(z) The Form in question is as follows :—

"No. 42. *Affidavit of Service of Order for Payment of Call.* [Rule 35.]

"In Chancery.

"In the matter, &c.

"I, J. B., of &c., make oath, and say as follows :—

"1. I did, on the                      day of                      , 186                      , personally serve G. F., of                      , in the county of                      , &c., with an Order made in this matter by His Honor the Master of the Rolls [or, Vice-Chancellor                      ], dated the                      day of                      , 186                      , whereby it was ordered [set out the Order in the past tense] by delivering to and leaving with the said G. F. at                      , in the county of                      , a true copy of the said Order, and at the same time producing and showing unto him, the said G. F., the said original Order duly entered.

"2. There was endorsed on the said copy, when so served, the following words, that is to say, 'If you, the within-named G. F., neglect to obey this Order by the time therein limited, you will be liable to be arrested under a writ of attachment issued out of the High Court of Chancery, or by the Serjeant-at-arms attending the same Court, and also be liable to have your estate sequestered for the purpose of compelling you to obey the same Order.'

"Sworn, &c."

(a) Or into any bank ordered by the Court in lieu of the Bank of England. See "County Court Rules, 1875," Order xxxix. ante, pp. 1120, 1121.

“same sum to the official liquidator.”—“Rules under Companies Act, 1862,” r. 38.

Notice to be given to party served with order for payment of calls.

*Rules under Companies Act, 1862, rule 39.*

It is provided that at the time of serving the order for payment of a call, the official liquidator shall give to the party served a notice prescribed by the following rule :—

“At the time of the service of any order for payment into the Bank of England (*aa*), the official liquidator shall give to the party served a notice, to the purport or effect set forth in Form No. 40 in the third Schedule hereto, for the purpose of informing him how the payment is to be made ; and before the time fixed for such payment, the official liquidator shall furnish the cashier of the Bank of England with a certificate, to the purport or effect set forth in Form No. 41 in the third Schedule hereto, to be signed by such cashier, and delivered to the party paying in the money therein-mentioned.”—“Rules under Companies Act, 1862,” r. 39.

Form of notice.

Form of certificate of payment of money at Bank of England.

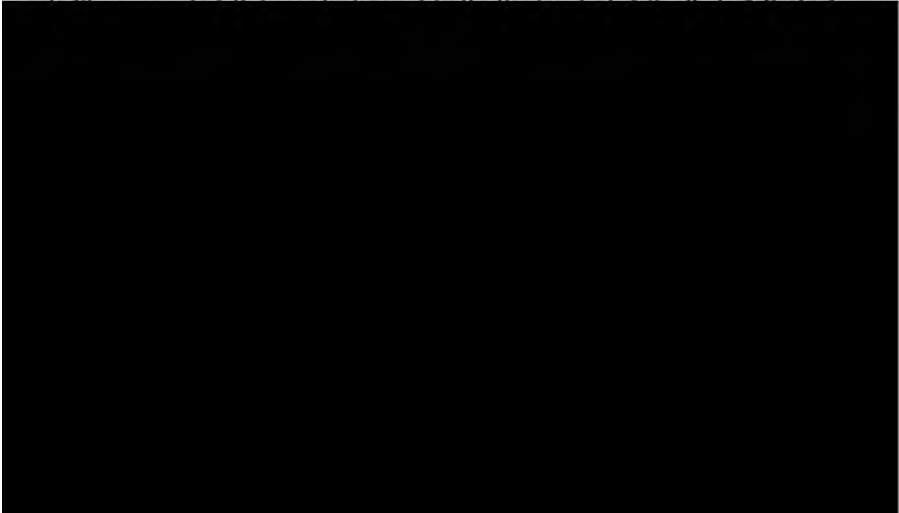
The form of notice referred to in the above rule is set out in the footnote (*b*) : and likewise the form of certificate of payment of money into the Bank of England (*c*).

Affidavit of official liquidator sufficient evidence of non-payment of call.

*Rules under Companies Act, 1862,*

When it is necessary to enforce any order for payment of money into the Bank of England, the affidavit of the official liquidator is, by the following rule, made sufficient evidence of the non-payment thereof :—

“For the purpose of enforcing any order for payment of money into the Bank of England an affidavit of the official liquidator, to the purport or effect set forth in Form No. 43 in the third Schedule hereto, shall be sufficient evidence of the non-payment thereof.”—“Rules under Companies Act, 1862,” r. 40.



The form of affidavit mentioned in the above rule is set out below (d).

To what extent an order for payment made upon a contributory shall be evidence of the truth of the statements therein contained is prescribed by the following section of "The Companies Act, 1862"—

"Any order made by the Court in pursuance of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the monies, if any, thereby appearing to be due or ordered to be paid are due, and all other pertinent matters

Form of affidavit of non-payment of call.

How far order for payment of call is evidence of statements therein contained.

*The Companies Act, 1862, s. 106.*

(d) The Form in question is as follows :

"No. 43. *Affidavit of Non-payment of Money by Order directed to be paid into the Bank of England.* [Rule 40.]

"In Chancery.

"In the matter, &c.

"I, R. P. H., of &c., the official liquidator of the above-named Company, make oath, and say as follows:—

"1. G. F., the person named in an Order made in this matter by his Honor the Master of the Rolls [or, Vice-Chancellor], dated \_\_\_\_\_ day of \_\_\_\_\_, 186\_\_\_\_, has not paid into the Bank of England, to the account of the official liquidator of the \_\_\_\_\_ Company the whole or any part of the sum of £ \_\_\_\_\_ as by the said Order directed.

[Or, in case of several parties.]

"1. None of the several persons whose names and addresses are set forth in the schedule hereunder written, and who have respectively been duly served with Orders made in this matter by His Honor the Master of the Rolls [or, Vice-Chancellor], of the respective dates set opposite to their respective names in the said schedule, have paid into the Bank of England to the account of the official liquidator of the \_\_\_\_\_ Company, the whole or any part of the several sums of money set opposite to their respective names in the said schedule hereunder written, as by the said Orders respectively directed.

"2. I am enabled to depose to such non-payment, by reason of my having this day ascertained, by inquiry at the said bank, that such payment [or, payments] has [or, have] not been made, and seen the certificate of payment in, numbered \_\_\_\_\_ [or, several certificates of payment in, the numbers whereof respectively are set forth in the sixth column of the said schedule, opposite the names of the said respective persons, being certificates] furnished by me to the cashier of the said bank for delivery to the said G. F. [or, several persons respectively] upon such payment [or, payments] being made, still in the hands of the cashier of the said bank. No notice [or, notices] of such payment [or, payments] having been made has [or, have] been given to me by the said G. F. [or, several persons respectively.]

"Sworn, &c.

"THE SCHEDULE ABOVE REFERRED TO.

Name.	Address.	Description.	Amount.	Date of Balance Order.	Number of Certificate.
			£ s. d.		

“ stated in such order are to be taken to be truly stated as  
 “ against all persons, and in all proceedings whatsoever, with  
 “ the exception of proceedings taken against the real estate of  
 “ any deceased contributory, in which case such order shall  
 “ only be *prima facie* evidence for the purpose of charging his  
 “ real estate, unless his heirs or devisees were on the list of  
 “ contributories at the time of the order being made.”—25 & 26  
 Vict. c. 89, s. 106.

Default by  
 personal re-  
 presentative  
 of deceased  
 contributory,  
 how dealt  
 with.

*The Com-  
 panies Act,  
 1862, s. 105.*

If the person making default in payment happens to be a contributory, as personal representative of a deceased contributory, administration proceedings may be taken under the following section of “ The Companies Act, 1862 ” :—

“ If any person made a contributory as personal representa-  
 “ tive of a deceased contributory makes default in paying any  
 “ sum ordered to be paid by him, proceedings may be taken for  
 “ administering the personal and real estates of such deceased  
 “ contributory, or either of such estates, and of compelling  
 “ payment thereof of the monies due.”—25 & 26 Vict. c. 89,  
 s. 105.

Arrest of  
 contributory.

*The Com-  
 panies Act,  
 1862, s. 118.*

In addition to the above powers of enforcing payment against a contributory, it is provided that upon proof being given of the facts mentioned in the following section he may be arrested :—

“ The Court may, at any time before or after it has made an  
 “ order for winding-up a company, upon proof being given  
 “ that there is probable cause for believing that any contribu-  
 “ tory to such company is about to quit the United Kingdom,  
 “ or otherwise abscond, or to remove or conceal any of his  
 “ goods or chattels, for the purpose of evading payment of calls,  
 “ or for avoiding examination in respect of the affairs of the  
 “ company, cause such contributory to be arrested and his



in *Scotland* with reference to the estate, dealings, or affairs of any company in the course of being wound up (e) :—

“The Court may direct the examination in *Scotland* of any person for the time being in *Scotland*, whether a contributory of the company or not, in regard to the estate, dealings, or affairs of any company in the course of being wound up, or in regard to the estate, dealings, or affairs of any person being a contributory of the company, so far as the company may be interested therein by reason of his being such contributory, and the order or commission to take such examination shall be directed to the sheriff of the county in which the person to be examined is residing or happens to be for the time, and the sheriff shall summon such person to appear before him at a time and place to be specified in the summons for examination upon oath as a witness or as a haver, and to produce any books, papers, deeds, or documents called for which may be in his possession or power, and the sheriff may take such examination either orally or upon written interrogatories, and shall report the same in writing in the usual form to the Court, and shall transmit with such report the books, papers, deeds, or documents produced, if the originals thereof are required and specified by the order, or otherwise such copies thereof or extracts therefrom, authenticated by the sheriff, as may be necessary : and in case any person so summoned fails to appear at the time and place specified, or appearing refuses to be examined or to make the production required, the sheriff shall proceed against such person as a witness or haver duly cited, and failing to appear or refusing to give evidence or make production may be proceeded against by the law of *Scotland* ; and the sheriff shall be entitled to such and the like fees, and the witness shall be entitled to such and the like allowances, as sheriffs when acting as commissioners under appointment from the Court of Session and as witnesses and havers are entitled to in the like cases according to the law and practice of *Scotland* : If any objection is stated to the sheriff by the witness, either on the ground of his incompetency as a witness, or as to the production required to be made, or on any other ground whatever, the sheriff may, if he thinks fit, report such objection to the Court, and suspend the examination of such witness until such objection has been disposed of by the Court.”—25 & 26 Vict. c. 89, s. 127.

As it may sometimes be desirable for the official liquidator to come to a compromise with a contributory or other person

tory resident in *Scotland*. Court may order the examination of persons in *Scotland*. *The Companies Act*, 1862, s. 127.

Official liquidator may

(e) It is presumed that a contributory *not* resident in *Scotland*, if suspected of having in his possession any property of the Society may be examined under sect. 115, set out *post*, pp. 1179, 1180. It is to be noticed, however, that the contributory is not mentioned in that section.

compromise  
of calls, and  
liabilities to  
calls, debts,  
&c.  
*The Com-  
panies Act,  
1862, s. 160.*

indebted, power for that purpose is conferred by the following section of "The Companies Act, 1862":—

"The liquidators may, with the sanction of the Court where  
"the company is being wound up by the Court or subject to  
"the supervision of the Court, and with the sanction of an  
"extraordinary resolution of the company where the company  
"is being wound up altogether voluntarily, compromise all  
"calls and liabilities to calls, debts, and liabilities capable of  
"resulting in debts, and all claims, whether present or future,  
"certain or contingent, ascertained or sounding only in  
"damages, subsisting or supposed to subsist between the com-  
"pany and any contributory or alleged contributory, or other  
"debtor or person apprehending liability to the company, and  
"all questions in any way relating to or affecting the assets of  
"the company or the winding up of the company, upon the  
"receipt of such sums, payable at such times, and generally  
"upon such terms as may be agreed upon, with power for the  
"liquidators to take any security for the discharge of such  
"debts or liabilities, and to give complete discharges in respect  
"of all or any such calls, debts, or liabilities."—25 & 26 Vict.  
c. 89, s. 160.

Application  
for sanction  
of Judge to a  
compromise  
to be sup-  
ported by  
affidavit.

*Rules under  
Companies  
Act, 1862,  
rule 49.*

The "Rules under the Companies Act, 1862," provide as follows on the same subject:—

"Every application for the sanction of the Judge to a com-  
"promise with any contributory or other person indebted to  
"the company, shall be supported by the affidavit of the official  
"liquidator that he has investigated the affairs of such con-  
"tributory or person, and stating his belief that the proposed  
"compromise will be beneficial to the company, and his reasons  
"for such belief; and the sanction of the Judge thereto shall  
"be testified by a memorandum, signed by the chief clerk of  
"the Judge, on the agreement of compromise, unless any party

There is also a form of memorandum of sanction of Judge to agreement of compromise (g).

Form of memorandum of sanction of Judge to such agreement.

"and there is now due from the said S. B. to the said Company the sum of £        in respect of the said call. And whereas the said S. B. has proposed to pay to the said official liquidator the sum of £        by way of compromise, and in satisfaction and discharge of the said sum of £        and of all liability whatsoever, as a contributory of the said Company. And whereas the said official liquidator, having investigated the affairs of the said S. B., and believing that such compromise will be beneficial to the said Company, hath, in exercise of the power for that purpose given to him by the above statute, agreed to accept the same, subject to the sanction of the said Judge and to the conditions and agreements hereinafter contained. Now it is hereby agreed by and between the said parties hereto :

"1st. That the said official liquidator shall, before the        day of        next, apply to the said Judge at chambers to sanction this agreement of compromise.

"2nd. That upon this agreement being sanctioned by the said Judge the said S. B. shall, within        days next after such sanction, pay to the said official liquidator the said sum of £       , and when thereto required, shall do and execute all such acts and deeds as may be necessary for transferring, or surrendering and releasing to the said official liquidator on behalf of the said Company, or in such manner as the said Judge may direct, the said shares held by the said S. B., in the said Company, and all claim and demand whatsoever which the said S. B. has, or may have, against the said Company in respect of the said shares, or the distribution of the assets of the said Company, or otherwise howsoever.

"3rd. That the said sum of £       , and the transfer or surrender and release of the said shares and interest of the said S. B., as aforesaid, shall be accepted by the said official liquidator as, and be deemed and taken to give to the said S. B. a full and complete discharge from all calls and liabilities, claims and demands whatsoever, which the said Company, or the official liquidator thereof now has or may hereafter have, or be entitled to against the said S. B., in respect of his being or having been the holder of the said shares, or otherwise, as a contributory of the said Company.

"4th. That in case this agreement shall not be sanctioned by the said Judge it shall cease and determine, and the said official liquidator and the said S. B. shall be remitted to their original rights with respect to each other, as if this agreement had not been entered into.

"5th. That in case this agreement shall be sanctioned by the said Judge, and the said S. B. shall not in all respects perform the same on his part, the official liquidator shall be at liberty, with the sanction of the said Judge, and without notice to the said S. B., to enforce the performance thereof, or, with the like sanction, to give notice to the said S. B. that he abandons this agreement, whereupon the same shall cease and determine, and the said official liquidator shall be entitled to proceed against the said S. B. to enforce payment of the said sum of £       , or so much thereof as shall then remain due and unpaid, as if this agreement had not been entered into.

" R. P. H., Official Liquidator.

" S. B.

" Witness to the signatures of the }  
said R. P. H. and S. B. }

" C. D., of &c."

(g) The Form in question is as follows :—

" No. 51. *Memorandum of Sanction of Judge to Agreement of Compromise.* [Rule 49.]

" In the matter, &c.

" The Master of the Rolls [or, Vice-Chancellor       ] has sanctioned this agreement of compromise.

" G. H., Chief Clerk."

(s.) *Orders against Contributories, Officers, and others, for the Payment of Money or Delivery up of Property.*

Enforcing claims against persons not liable as contributories.

Contributory may be required to deliver up property of company.

*The Companies Act, 1862, s. 100.*

Form of order.

Order for payment by a contributory of a debt.

Where contributory, independently of

It not unfrequently happens that a society which is being wound up has claims against persons who are not liable to be placed on the list of contributories. Facilities are provided for enforcing such claims, which will now be considered.

If a *contributory* has any money or property in his possession belonging to the society, he may be required to deliver it up :—

“ The Court may, at any time after making an order for winding up a company, require any contributory for the time being settled on the list of contributories, trustee, receiver, banker, or agent, or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to or into the hands of the official liquidator, any sum or balance, books, papers, estate, or effects which happen to be in his hands for the time being, and to which the company is *prima facie* entitled.”—25 & 26 Vict. c. 89, s. 100.

A form of order for payment of money or delivery of books, &c., to official liquidator, is provided (*h*).

It sometimes happens that a contributory, independently of his liability to contribute to the discharge of the liabilities of the society, is likewise a debtor of the society, and is as such liable to make payment of what he owes. When this is the case, an order for payment may be made against him under “ The Companies Act, 1862,” which provides as follows :—

“ The Court may, at any time after making an order for winding up the company, make an order on any contributory for the time being settled on the list of contributories, direct-

"the company, but not any monies due to him as a member of  
"the company in respect of any dividend or profit :

"Provided that when all the creditors of any company  
"whether limited or unlimited are paid in full, any monies due  
"on any account whatever to any contributory from the com-  
"pany may be allowed to him by way of set-off against any  
"subsequent call or calls."—25 & 26 Vict. c. 89, s. 101.

In the same manner there also is power to compel the officers  
of a company or society, in course of being wound up, to pay  
over money or deliver up property.

"Where, in the course of the winding up of any company  
"under this Act, it appears that any past or present director,  
"manager, official or other liquidator, or any officer of such com-  
"pany, has misapplied or retained in his own hands, or become  
"liable or accountable for any monies of the company, or been  
"guilty of any misfeasance or breach of trust in relation to the  
"company, the Court may, on the application of any liqui-  
"dator, or of any creditor or contributory of the company, not-  
"withstanding that the offence is one for which the offender is  
"criminally responsible, examine into the conduct of such  
"director, manager, or other officer, and compel him to repay  
"any monies so misapplied or retained, or for which he has  
"become liable or accountable, together with interest after such  
"rate as the Court thinks just, or to contribute such sums of  
"money to the assets of the company by way of compensation  
"in respect of such misapplication, retainer, misfeasance, or  
"breach of trust, as the Court thinks just."—25 & 26 Vict.  
c. 89, s. 165 (i).

"The Court may, after it has made an order for winding up  
"the company, summon before it any officer of the company or  
"person known or suspected to have in his possession any of  
"the estate or effects of the company, or supposed to be in-  
"debted to the company, or any person whom the Court may  
"deem capable of giving information concerning the trade,  
"dealings, estate, or effects of the company ; and the Court  
"may require any such officer or person to produce any books,  
"papers, deeds, writings, or other documents in his custody or  
"power relating to the company ; and if any person so sum-  
"moned, after being tendered a reasonable sum for his ex-  
"penses, refuses to come before the Court at the time appointed,  
"having no lawful impediment (made known to the Court at  
"the time of its sitting, and allowed by it), the Court may

Officers, &c.,  
may be ordered  
to pay over  
money or  
deliver up  
property.

*The Com-  
panies Act,*  
1862, s. 165.

Power of  
Court to sum-  
mon before it  
persons sus-  
pected of  
having prop-  
erty of  
company.

*The Com-  
panies Act,*  
1862, s. 115.

"surrender, or transfer to or into the hands of] R. P. H., the official liquidator  
"of the said Company, at the office of the said R. P. H., situate at &c., the sum  
"of £ , being the amount of debt appearing to be due from the said  
"A. B., on his account with the said Company [or, any sum or balance, books,  
"papers, estate, or effects], [or, specifically describe the property] now being in  
"the hands of the said A. B., and to which the said Company is *prima facie*  
"entitled [or, otherwise, as the case may be]."

(i) Any officer who is guilty of falsifying books, &c., is liable to be punished.

Examination of parties as to property, &c., of company.

*The Companies Act, 1862, s. 117.*

Form of summons for persons to attend at chambers to be examined.

Prosecution of officer of company.

Acts which are offences under "The Companies Acts."

*The Companies Act, 1862, s. 166.*

"cause such person to be apprehended, and brought before the Court for examination ; nevertheless, in cases where any person claims any lien on papers, deeds, or writings or documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to such lien."—25 & 26 Vict. c. 89, s. 115.

"The Court may examine upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before them in manner aforesaid concerning the affairs, dealings, estate, or effects of the company, and may reduce into writing the answers of every such person, and require him to subscribe the same."—25 & 26 Vict. c. 89, s. 117 (*k*).

A form of summons for persons to attend at chambers to be examined, is provided (*l*).

#### (*l*.) *Orders for the Prosecution of Fraudulent Officers, &c.*

It sometimes happens that the conduct of an officer is such that he is not merely *civilly* responsible to the society being wound up, but that his conduct renders him *criminally* responsible.

The following section of "The Companies Act, 1862," renders certain acts by the officers of public companies offences under the Act :—

"If any director, officer, or contributory of any company wound up under this Act destroys, mutilates, alters, or falsifies any books, papers, writings, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or other document belonging to the

“ company with intent to defraud or deceive any person, every person so offending shall be deemed to be guilty of a misdemeanor, and upon being convicted shall be liable to imprisonment for any term not exceeding two years, with or without hard labour.”—25 & 26 Vict. c. 89, s. 166.

Power to order a prosecution in certain cases, is conferred as follows :—

“ Where any order is made for winding up a company by the Court or subject to the supervision of the Court, if it appear in the course of such winding up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, the Court may, on the application of any person interested in such winding up, or of its own motion, direct the official liquidator, or the liquidators, (as the case may be,) to institute and conduct a prosecution or prosecutions for such offence, and may order the costs and expenses to be paid out of the assets of the company.”—25 & 26 Vict. c. 89, s. 167.

“ The Rules under the Companies Act, 1862,” provide that every application under the above section shall be by petition or motion :—

“ Every application under the 137th, 138th, or 141st section of the said Act shall be made by petition or motion, or, if the Judge shall so direct, by summons at chambers ; and every application under the 167th or 168th section of the said Act shall be made by petition.”—“ Rules under Companies Act, 1862,” r. 51.

(u.) *Sales of the Property of the Company which is being Wound up.*

Sales of property belonging to a society may be directed as appears from the following rule :—

“ Any real or personal property belonging to the company may be sold with the approbation of the Judge, in the same manner as in the case of a sale under a decree or order of the Court in a suit, or, if the Judge shall so direct, by the official liquidator ; and upon any such sale by the official liquidator, the conditions or contracts of sale shall be settled and approved of by the Judge, unless he shall otherwise direct ; and the Judge may, if he thinks fit, direct such conditions and contracts, and the abstract of the title to the property, to be submitted to one of the conveyancing council (aa) of the Court, under the 2nd of the Consolidated General Orders, and may, on any sale by public auction, fix a reserved bidding ; and, unless on account of the small amount of the purchase moneys or other cause, it shall, having regard to the amount of the

Prosecution of delinquent directors.

*The Companies Act, 1862, s. 167.*

Application for leave to prosecute to be by petition or motion.

Applications under 167th section, how made.

*Rules under Companies Act, 1862, rule 51.*

Sales of property may be directed.

*Rules under Companies Act, 1862, rule 32.*

(sic.)

(aa) This is obviously a misprint in the original rules for “ counsel.”

“ security given by the official liquidator, be thought proper  
 “ that the purchase moneys shall be paid to him, all conditions  
 “ and contracts of sale shall provide that the purchase moneys  
 “ shall be paid by the respective purchasers into the Bank of  
 “ England, to the account of the official liquidator of the  
 “ company.”—“ Rules under Companies Act, 1862,” r. 32.

(v.) *Distribution of Assets not required for Creditors.*

Satisfaction  
of claims of  
creditors.

Court will  
adjust rights  
of contribu-  
tories *inter se*  
and distribute  
surplus.

*The Com-  
panies Act,  
1862, s. 109.*

When the assets of the society are collected, the claims of the creditors will be duly satisfied thereout. And it is provided by “ The Companies Act, 1862,” that :—

“ The Court shall adjust the rights of the contributories  
 “ amongst themselves, and distribute any surplus that may  
 “ remain amongst the parties entitled thereto.”—25 & 26 Vict.  
 c. 89, s. 109.

(w.) *Orders for Costs of Winding up to have priority over Debts.*

Special order  
as to costs,  
&c., of wind-  
ing up where  
assets do not  
meet liabili-  
ties.

*The Com-  
panies Act,  
1862, s. 110.*

In the event of the assets of a company being insufficient to satisfy the liabilities, a special order as to the payment of the costs will be made in pursuance of the following section of “ The Companies Act, 1862 : ”—

“ The Court may, in the event of the assets being insufficient  
 “ to satisfy the liabilities, make an order as to the payment out of  
 “ the estate of the company of the costs, charges, and expenses  
 “ incurred in winding up any company in such order of priority  
 “ as the Court thinks just.”—25 & 26 Vict. c. 89, s. 110.



"whom the custody of such books, accounts, and documents has been committed, by reason that the same or any of them cannot be made forthcoming to any party or parties claiming to be interested therein."—25 & 26 Vict. c. 89, s. 155.

"The Rules under Companies Act, 1862," provide as follows :—

"When the proceedings for winding up any company have been completed, the file of proceedings, and the book containing the official liquidator's account, shall be deposited in the Record and Writ Clerk's Office."—"Rules under Companies Act, 1862," r. 67.

Deposit of file of proceedings for winding up and of official liquidator's book.

*Rules under Companies Act, 1862, rule 67.*

(y.) *Certificate of Completion of the Winding up.*

"The Rules under Companies Act, 1862," provide as follows :—

"Upon the termination of the proceedings in Chambers for the winding up of any company, a balance-sheet shall be brought in by the official liquidator of his receipts and payments, and verified by his affidavits; and the official liquidator shall pass his final account, and the balance (if any) due thereon shall be certified. And upon payment of such balance, in such manner as the Court or Judge shall direct, the recognisance entered into by the official liquidator and his sureties may be vacated."—"Rules under Companies Act, 1862," r. 65.

*Rules under Companies Act, 1862, rule 65.*

"When the official liquidator has passed his final account, and the balance (if any) certified to be due thereon has been paid in such manner as the Judge shall direct, a certificate shall be made by the chief clerk, that the affairs of the company have been completely wound up; and in case the company has not been already dissolved, the official liquidator shall, immediately after such certificate has become binding, apply to the Judge for an order that the company be dissolved from the date of such order."—"Rules under Companies Act, 1862," r. 66.

*Rules under Companies Act, 1862, rule 66.*

A form of certificate of the company being completely wound up, and of the official liquidator having passed his final account is provided (m).

Form of certificate of company being completely wound up.

(m) The Form in question is as follows :—

"No. 55. *Certificate of the Company being completely wound up, and of the Official Liquidator having passed his final Account.* [Rule 66.]

"In the matter, &c.

"In pursuance of the directions given to me by the Master of the Rolls [or, Vice-Chancellor], I hereby certify that R. P. H., the official liquidator of the above-named Company, has passed his final account as such official liquidator, And that the balance of £                      thereby certified to be due to [or from] the said official liquidator has been paid in the manner directed by the



SECTION III.—JURISDICTION AND PROCEEDINGS UPON A  
VOLUNTARY WINDING-UP.

The general jurisdiction of the County Court over voluntary windings-up is derived from "The Companies Acts, 1862 and 1867," mentioned in the last section. Such proceedings as are peculiar to a voluntary winding-up will be mentioned in the present section, but they must be supplemented by a general reference to those detailed in the preceding section as taking place in a compulsory winding-up, and the practitioner must refer to that section.

General jurisdiction and constitution of County Courts with regard to voluntary windings up.

(a.) *When a Voluntary Winding-up may take place.*

The circumstances under which a voluntary winding-up may take place are defined in "The Companies Act, 1862," which provides as follows:—

Under what circumstances a voluntary winding-up may take place.

"A company under this Act may be wound up voluntarily:

*The Companies Act, 1862, s. 129.*

- "(1.) Whenever the period, if any, fixed for the duration  
"of the company by the articles of association  
"expires, or whenever the event, if any, occurs,  
"upon the occurrence of which it is provided by  
"the articles of association that the company is  
"to be dissolved, and the company in general  
"meeting has passed a resolution requiring the  
"company to be wound up voluntarily :

- "(2.) Whenever the company has passed a special resolution requiring the company to be wound up voluntarily :

- "(3.) Whenever the company has passed an extraordinary  
"resolution to the effect that it has been proved  
"to their satisfaction that the company cannot  
"by reason of its liabilities continue its business,  
"and that it is advisable to wind up the same :

"For the purposes of this Act any resolution shall be deemed  
"to be extraordinary which is passed in such manner as would,  
"if it had been confirmed by a subsequent meeting, have constituted a special resolution as hereinbefore defined."—25 & 26 Vict. c. 89, s. 129.

Notice of a resolution to wind up voluntarily must be given as provided by the following section of "The Companies Act, 1862" :—

Notice of a resolution to wind up voluntarily must be given.

"Notice of any special resolution or extraordinary resolution  
"passed for winding up a company voluntarily shall be given  
"by advertisement, as respects companies registered in England in the *London Gazette*, as respects companies registered  
"in Scotland in the *Edinburgh Gazette*, and as respects com-

*The Companies Act, 1862, s. 132.*

“panies registered in Ireland in the *Dublin Gazette*.”—25 & 26 Vict. c. 89, s. 132.

Commence-  
ment of  
voluntary  
winding-up.

*The Com-  
panies Act,  
1862, s. 130.*

As to when a voluntary winding-up shall be deemed to commence “The Companies Act, 1862,” provides as follows :—

“A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorising such winding up.”—25 & 26 Vict. c. 89, s. 130.

(b.) *Effect of a Resolution for Voluntary Winding-up.*

Effect of a  
resolution for  
a voluntary  
winding-up.

—On busi-  
ness of the  
company.

*The Com-  
panies Act,  
1862, s. 131.*

It is now necessary to see what is the effect of a resolution that a company or society shall be voluntarily wound up :—

“Whenever a company is wound up voluntarily the company shall, from the date of the commencement of such winding up, cease to carry on its business, except in so far as may be required for the beneficial winding-up thereof, and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the company taking place after the commencement of such winding up, shall be void, but its corporate state and all its corporate powers shall, notwithstanding it is otherwise provided by its regulations, continue until the affairs of the company are wound up.”—25 & 26 Vict. c. 89, s. 131.

—On assets  
of the com-  
pany.

*The Com-  
panies Act,  
1862, s. 133,  
sub-s. 1.*

“The property of the company shall be applied in satisfaction of its liabilities *pari passu* and subject thereto, shall, unless it be otherwise provided by the regulations of the company, be distributed among the members according to their rights and interest in the company.”—“The Companies Act, 1862,” s. 133, sub-s. 1 (o).

“ exercise, as respects the enforcing of calls, or in respect of  
 “ any other matter, all or any of the powers which the Court  
 “ might exercise if the company were being wound up by the  
 “ Court; and the Court or Lord Ordinary, in the case aforesaid,  
 “ if satisfied that the determination of such question, or the  
 “ required exercise of power, will be just and beneficial, may  
 “ accede, wholly or partially, to such application, on such  
 “ terms and subject to such conditions as the Court thinks fit,  
 “ or it may make such other order, interlocutor, or decree on  
 “ such application as the Court thinks just.”—25 & 26 Vict.  
 c. 89, s. 138.

*The Com-  
 panies Act,  
 1862, s. 138.*

(c.) *Appointment of Official Liquidator.*

The appointment of official liquidator to companies in course of voluntary winding-up is governed by the following sections:—

“ The following consequences shall ensue upon the voluntary  
 “ winding-up of a company :

*The Com-  
 panies Act,  
 1862, s. 133.*

- “ (1.) The property of the company shall be applied in  
 “ satisfaction of its liabilities *pari passu*, and, sub-  
 “ ject thereto, shall, unless it be otherwise pro-  
 “ vided by the regulations of the company, be  
 “ distributed amongst the members according to  
 “ their rights and interest in the company :
- “ (2.) Liquidators shall be appointed for the purpose of  
 “ winding up the affairs of the company and  
 “ distributing the property :
- “ (3.) The company in general meeting shall appoint such  
 “ persons or person as it thinks fit to be liqui-  
 “ dators or a liquidator, and may fix the re-  
 “ muneratation to be paid to them or him :
- “ (4.) If one person only is appointed, all the provisions  
 “ herein contained in reference to several liqui-  
 “ dators shall apply to him :
- “ (5.) Upon the appointment of liquidators all the power  
 “ of the directors shall cease, except in so far as  
 “ the company in general meeting or the liqui-  
 “ dators may sanction the continuance of such  
 “ powers :
- “ (6.) When several liquidators are appointed, every  
 “ power hereby given may be exercised by such  
 “ one or more of them as may be determined at  
 “ the time of their appointment, or in default of  
 “ such determination by any number not less  
 “ than two :
- “ (7.) The liquidators may, without the sanction of the  
 “ Court, exercise all powers by this Act given to  
 “ the official liquidator :
- “ (8.) The liquidators may exercise the powers herein-

“ before given to the Court of settling the list of  
 “ contributories of the company, and any list so  
 “ settled shall be *prima facie* evidence of the  
 “ liability of the persons named therein to be  
 “ contributories :

“(9.) The liquidators may at any time after the passing  
 “ of the resolution for winding up the company,  
 “ and before they have ascertained the sufficiency  
 “ of the assets of the company, call on all or any  
 “ of the contributories for the time being settled  
 “ on the list of contributories to the extent of  
 “ their liability to pay all or any sums they  
 “ deem necessary to satisfy the debts and liabi-  
 “ lities of the company, and the costs, charges,  
 “ and expenses of winding it up, and for the  
 “ adjustment of the rights of the contributories  
 “ amongst themselves, and the liquidators may  
 “ in making a call take into consideration the  
 “ probability that some of the contributories  
 “ upon whom the same is made may partly or  
 “ wholly fail to pay their respective portions of  
 “ the same :

“(10.) The liquidators shall pay the debts of the company,  
 “ and adjust the rights of the contributories  
 “ amongst themselves.”—25 & 26 Vict. c.89, s.133.

Appointment  
 may be dele-  
 gated by com-  
 pany to its  
 creditors or  
 a portion of  
 them.

“ A company about to be wound up voluntarily, or in the  
 “ course of being wound up voluntarily, may, by an extraor-  
 “ dinary resolution, delegate to its creditors, or to any committee  
 “ of its creditors, the power of appointing liquidators or any of  
 “ them, and supplying any vacancies in the appointment of  
 “ liquidators, or may by a like resolution enter into any arrange-

“by the company, by death, resignation, or otherwise, the company in general meeting may, subject to any arrangement they may have entered into with their creditors, fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the company, and shall be deemed to have been duly held if held in manner prescribed by the regulations of the company, or in such other manner as may, on application by the continuing liquidator, if any, or by any contributory of the company, be determined by the Court.”—25 & 26 Vict. c. 89, s. 140.

Removal of liquidator and appointment of another in his place.

*The Companies Act, 1862, s. 140.*

(d.) *Powers and Duties of Official Liquidators.*

When a winding-up is voluntary, the liquidators are empowered to call general meetings from time to time. On this subject “The Companies Act, 1862,” provides as follows:—

Liquidators in a voluntary winding-up empowered to call general meetings from time to time.

“Where a company is being wound up voluntarily the liquidators may, from time to time, during the continuance of such winding up, summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or extraordinary resolution, or for any other purposes they think fit; and in the event of the winding-up continuing for more than one year, the liquidators shall summon a general meeting of the company at the end of the first year, and of each succeeding year from the commencement of the winding-up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings, and the manner in which the winding-up, has been conducted during the preceding year.”—25 & 26 Vict. c. 89, s. 139.

*The Companies Act, 1862, s. 139.*

The following sections of “The Companies Act, 1862,” relate to arrangements entered into between a company about to be wound up voluntarily and its creditors:—

Arrangements in the case of a voluntary winding-up between the company and its creditors.

“Any arrangement entered into between a company about to be wound up voluntarily, or in the course of being wound up voluntarily, and its creditors, shall be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is hereinafter mentioned.”—25 & 26 Vict. c. 89, s. 136.

When binding.

*The Companies Act, 1862, s. 136.*

“Any creditor or contributory of a company that has in manner aforesaid entered into any arrangement with its creditors may, within three weeks from the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon, as it thinks just, amend, vary, or confirm the same.”—25 & 26 Vict. c. 89, s. 137.

Appeal against such arrangement.

*The Companies Act, 1862, s. 137.*

“The Companies Act, 1862,” empowers the liquidators in On sale of

business of company, being wound up to another company, shares in such other company may be accepted as whole or part consideration.

Power for liquidators to accept shares, &c., as a consideration for sale of property of company.

*The Companies Act, 1862, s. 161.*

cases where it is proposed to sell the business or property of a company, which is being wound up voluntarily, to another company, to accept shares, policies, or other like interests in such other company, as a consideration for the sale :—

“ Where any company is proposed to be or is in the course of being wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first-mentioned company may, with the sanction of a special resolution of the company by whom they were appointed, conferring either a general authority on the liquidators, or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale shares, policies, or other like interests in such other company, for the purpose of distribution amongst the members of the company being wound up, or may enter into any other arrangement whereby the members of the company being wound up may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing company ; and any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the members of the company being wound up ; subject to this proviso, that if any member of the company being wound up who has not voted in favour of the special resolution passed by the company of which he is a member at either of the meetings held for passing the same expresses his dissent from any such special resolution in writing addressed to the liquidators or one of them, and left at the registered office of the company not later than seven days after the date of the meeting at which such special resolution was passed.



“but if the parties dispute about the same such dispute shall be settled by arbitration, and for the purposes of such arbitration the provisions of ‘The Companies Clauses Consolidation Act, 1845,’ with respect to the settlement of disputes by arbitration, shall be incorporated with this Act; and in the construction of such provisions this Act shall be deemed to be the special Act, and ‘the company’ shall mean the company that is being wound up, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, if only one, or any two or more of the liquidators if more than one.”—25 & 26 Vict. c. 89, s. 162.

Price to be paid for the purchase of the interest of dissentient shareholders, how determined.

*The Companies Act, 1862, s. 162.*

The following sections of “The Companies Act, 1862,” indicate the duties of the liquidators on the conclusion of a voluntary winding-up:—

Duties of liquidators on conclusion of voluntary winding-up.

“As soon as the affairs of the company are fully wound up, the liquidators shall make up an account showing the manner in which such winding up has been conducted, and the property of the company disposed of; and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators: The meeting shall be called by advertisement, specifying the time, place, and object of such meeting; and such advertisement shall be published one month at least previously to the meeting, as respects companies registered in England in the *London Gazette*, and as respects companies registered in Scotland in the *Edinburgh Gazette*, and as respects companies registered in Ireland in the *Dublin Gazette*.”—25 & 26 Vict. c. 89, s. 142.

To make up account and call general meeting.

*The Companies Act, 1862, s. 142.*

“The liquidators shall make a return to the registrar of such meeting having been held, and of the date at which the same was held, and on the expiration of three months from the date of the registration of such return the company shall be deemed to be dissolved: If the liquidators make default in making such return to the registrar they shall incur a penalty not exceeding five pounds for every day during which such default continues.”—25 & 26 Vict. c. 89, s. 143.

To make a return to the registrar.

*The Companies Act, 1862, s. 143.*

### (c.) *Orders for the Prosecution of Directors or Officers.*

If, during the progress of a voluntary winding-up, it appear to the liquidators who are conducting it, that any officer or member of the company has been guilty of a criminal offence, they can, with the sanction of the Court, prosecute the offender. This is provided by the following section of “The Companies Act, 1862” :—

Prosecution of defaulting officers of company by liquidators.

*The Companies Act,*  
1862, s. 168.

“Where a company is being wound up altogether voluntarily, if it appear to the liquidators conducting such winding up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, it shall be lawful for the liquidators, with the previous sanction of the Court, to prosecute such offender, and all expenses properly incurred by them in such prosecution shall be payable out of the assets of the company in priority to all other liabilities.”—25 & 26 Vict. c. 89, s. 168.

(f.) *Costs of Liquidation.*

Cost of  
voluntary  
winding-up.

*The Companies Act,*  
1862, s. 144.

With regard to the costs of a voluntary winding-up, it is provided as follows :—

“All costs, charges, and expenses properly incurred in the voluntary winding-up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims.”—25 & 26 Vict. c. 89, s. 144.

• SECTION IV.—VOLUNTARY WINDING-UP UNDER THE  
SUPERVISION OF THE COURT.

General  
nature of a  
winding-up  
under super-  
vision of the  
Court.

A voluntary liquidation does not bar the right of a creditor to have a company wound up by the Court, but the Court may in any case order a voluntary winding-up to continue, subject to the supervision of the Court. The present section will contain the enactments and rules relating to such a winding up.

“ When a resolution has been passed by a company to wind up voluntarily, the Court may make an order directing that the voluntary winding-up should continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others, to apply to the Court, and generally upon such terms and subject to such conditions as the Court thinks just.”—25 & 26 Vict. c. 89, s. 147.

Court, the order may adopt all or any of the proceedings taken in the voluntary winding-up.

*The Companies Act*, 1862, s. 146.

*The Companies Act*, 1862, s. 147.

(b.) *Petition for a Winding-up under the Supervision of the Court.*

The proceedings for a voluntary winding-up, subject to the supervision of the Court, are commenced by petition :—

“ A petition praying wholly or in part that a voluntary winding-up should continue, but subject to the supervision of the Court, and which winding-up is hereinafter referred to as a winding-up, subject to the supervision of the Court, shall, for the purpose of giving jurisdiction to the Court over suits and actions, be deemed to be a petition for winding up the company by the Court.”—25 & 26 Vict. c. 89, s. 148.

Commencement of proceedings for a voluntary winding-up subject to supervision.

*The Companies Act*, 1862, s. 148.

The petition should be served upon the liquidator (*p*), and also upon the society (*q*).

Upon whom petition to be served.

(c.) *Hearing of and Order on Petition for a Winding-up under Supervision.*

The nature of the order which may be made upon the hearing of a petition for a voluntary winding-up is defined by sections 146, 147, and 148 of the Act, which have already been set out.

Nature of order which may be made. Directions to summon a meeting of the company.

Instead of at once making an order on the petition, the Court may direct a meeting of the company to be called, in order to ascertain the wishes of the creditor or creditors. On this subject “The Companies Act, 1862,” provides as follows :—

The Court may, after making order for winding-up subject to supervision, consult wishes of creditors.

“ The Court may, in determining whether a company is to be wound up altogether by the Court or subject to the supervision of the Court, in the appointment of liquidator or liquidators, and in all other matters relating to the winding-up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held, and regulated in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to

*The Companies Act*, 1862, s. 149.

(p) Rule 3, *ante*, p. 1128.

(q) *Ib.*, and see *Petroleum Co.*, 15 W. R. 29; *Inventors' Association*, 13 W. R. 1015.

“ the Court : In the case of creditors, regard shall be had to  
 “ the value of the debts due to each creditor, and in the case  
 “ of contributories to the number of votes conferred on each  
 “ contributory by the regulations of the company.”—25 & 26  
 Vict. c. 89, s. 149.

Form of  
 order.

The form of order—should one be made by the Court—is duly  
 provided (*r*).

Effect of  
 order.

The effect of an order as to stay appears from the following  
 section of “ The Companies Act, 1862 ” :—

Effect of  
 order for  
 winding-up  
 subject to  
 supervision.

*The Com-  
 panies Act,  
 1862, s. 151.*

“ Where an order is made for a winding-up subject to the  
 “ supervision of the Court, the liquidators appointed to conduct  
 “ such winding up may, subject to any restrictions imposed by  
 “ the Court, exercise all their powers, without the sanction or  
 “ intervention of the Court, in the same manner as if the com-  
 “ pany were being wound up altogether voluntarily ; but, save as  
 “ aforesaid, any order made by the Court for a winding-up  
 “ subject to the supervision of the Court shall for all purposes,  
 “ including the staying of actions, suits, and other proceedings,  
 “ be deemed to be an order of the Court for winding up the  
 “ company by the Court, and shall confer full authority on the  
 “ Court to make calls, or to enforce calls made by the liqui-  
 “ dators, and to exercise all other powers which it might have  
 “ exercised if an order had been made for winding up the  
 “ company altogether by the Court : and in the construction  
 “ of the provisions whereby the Court is empowered to direct  
 “ any act or thing to be done to or in favour of the official  
 “ liquidators, the expression official liquidators shall be deemed  
 “ to mean the liquidators conducting the winding-up subject  
 “ to the supervision of the Court.”—25 & 26 Vict. c. 89, s. 151.

“such order or in any subsequent order, appoint any additional liquidator or liquidators; and any liquidators so appointed by the Court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if they had been appointed by the company: The Court may from time to time remove any liquidators so appointed by the Court, and fill up any vacancy occasioned by such removal, or by death or resignation.”—25 & 26 Vict. c. 89, s. 150.

*The Companies Act, 1862, s. 150.*

“Where an order is made for a winding-up subject to the supervision of the Court the liquidators appointed to conduct such winding up, may, subject to any resolutions imposed by the Court, exercise all their powers without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether and voluntarily. . . .”—25 & 26 Vict. c. 89, s. 151 (s).

*The Companies Act, 1862, s. 151.*

“Where an order has been made for the winding-up of a company subject to the supervision of the Court, and such order is afterwards superseded by an order directing the company to be wound up compulsorily, the Court may in such last-mentioned order, or in any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other persons, to be official liquidators.”—25 & 26 Vict. c. 89, s. 152.

Voluntary liquidators may be appointed by Court to act as official liquidators.

*The Companies Act, 1862, s. 152.*

#### SECTION V.—JURISDICTION AND PROCEEDINGS IN WINDING-UP MATTERS TRANSFERRED TO THE COUNTY COURT FROM THE HIGH COURT.

In the preceding sections of this chapter we have considered the *original* and *exclusive* jurisdiction possessed by the County Court, especially in the winding-up of industrial and provident societies and building societies. In addition, however, to this jurisdiction, the County Courts likewise possess a *derivative* jurisdiction which will now be briefly described.

Jurisdiction of High Court to transfer winding-up proceedings to a County Court.

Where the Chancery Division of the High Court makes an order for winding up a company under “The Companies Act, 1862,” it may, if it pleases, instead of allowing the *subsequent* proceedings to be carried on in the High Court, refer them to a County Court. On this subject, “The Companies Act, 1867,” provides as follows:—

Derivative jurisdiction of County Courts in regard to the winding-up of public companies.

“Where the High Court of Chancery in England makes an order for winding up a company under the principal Act, it may, if it thinks fit, direct all subsequent proceedings to be had in a County Court held under an Act of the session of

After order to wind up made in High Court, sub-

(\*) See this section in full, *supra*, p. 1194.

sequent proceedings may be transferred to County Court.

*The Companies Act, 1867, s. 41.*

When order referring winding-up proceedings to a County Court will be made.

“ the ninth and tenth years of the reign of her present Majesty, chapter ninety-five, and the Acts amending the same ; and thereupon such County Court shall, for the purpose of winding up the company, be deemed to be ‘ the Court ’ within the meaning of the principal Act, and shall have, for the purpose of such winding up, all the jurisdiction and powers of the High Court of Chancery.”—30 & 31 Vict. c. 131, s. 41.

It is necessary to make one or two remarks on the above section.

As regards the circumstances under which winding-up proceedings will be remitted to the County Court, the following case will serve as a guide on the subject.

In the case of *Re The London and Westminster Co-Operative Store Co. (l)*, the Court of Chancery, in order to save expense, referred a winding-up petition to chambers, for the purpose of referring it thence to the County Court. And in *Re The Birkenhead Benefit Building Society (u)*, where an order was applied for to wind up a company whose business was purely local, and whose assets only amounted to £100, the Court made the order, and directed the proceedings to be transferred to the County Court of the district where the office of the company was situated.

It is to be noticed that to give the County Court jurisdiction to entertain winding-up proceedings under the above section (section 41) of “ The Companies Act, 1867,” there must be a concurrence of two conditions, namely, (1), the making of a winding-up order by the Chancery Division of the High Court ; and (2), an order by such Divisional Court directing all proceedings, *subsequent* to the winding-up, to be had in the County Court.

charges, specially applicable to cases where winding-up proceedings have been remitted to the County Court, have been conferred by the following sections of "The Companies Act, 1867 :"—

orders and a scale of costs may be framed.

"The County Court Judges appointed or to be appointed by the Lord Chancellor from time to time to frame rules and orders for regulating the practice of the Courts, and forms of proceedings therein, under the thirty-second section of an Act passed in the nineteenth and twentieth years of the reign of her present Majesty, chapter one hundred and eight, shall frame the rules and orders for regulating the practice of the County Courts under this Act, and forms of proceedings therein, and from time to time may amend such rules, orders, and forms ; and such rules, orders, and forms, or amended rules, orders, and forms, certified under the hands of such Judges or of any three or more of them, shall be submitted to the Lord Chancellor, who may allow or disallow or alter the same, and so from time to time ; and the rules, orders, and forms, or amended rules, orders, and forms, so allowed or altered, shall from a day to be named by the Lord Chancellor be in force in every County Court."—30 & 31 Vict. c. 131, s. 44.

Power to frame rules and orders.  
*The Companies Act, 1867, s. 44.*

The power conferred by this section has been exercised in manner already pointed out, namely, by the framing of Order XXXIX. of "The County Court Rules, 1875" (x) :—

How the above power has been exercised.

"The County Court Judges mentioned in the last section shall be empowered to frame a scale of costs and charges to be paid to counsel and attorneys with respect to all proceedings in a winding-up under this Act, and from time to time to amend such scale ; and such scale or amended scale, certified under the hands of such Judges or any three or more of them, shall be submitted to the Lord Chancellor, who from time to time may allow or disallow or alter the same ; and the scale or amended scale so allowed or altered shall, from a day to be named by the Lord Chancellor, be in force in every County Court" (y).—30 & 31 Vict. c. 131, s. 45.

Scale of costs and charges.  
*The Companies Act, 1867, s. 45.*

It is quite unnecessary to treat of the *mode* in which winding-up proceedings, remitted to the County Court, are conducted. For these proceedings are regulated entirely by the provisions of "The Companies Act, 1862," and the rules made thereunder, which have been set out in the preceding sections of this chapter (z).

Mode in which winding-up proceedings referred to the County Court are conducted.

(x) See *ante*, p. 1120.

(y) See *post*, Schedule (B.), Part III. of "The County Court Rules, 1875."

(z) *Ante*, sect. 1, pp. 1120 *et seq.*

SECTION VI.—JURISDICTION AND PROCEEDINGS IN THE  
COUNTY COURTS FOR TAKING EVIDENCE UNDER “THE  
COMPANIES ACT, 1862.”

Power of  
County Court  
to take evi-  
dence in  
winding-up  
cases pending  
in the High  
Court.

*The Com-  
panies Act,  
1862, s. 126.*

“The Companies Act, 1862,” empowers County Court Judges, who sit at places more than twenty miles from the General Post Office, to act as special commissioners for taking evidence under the Act, in cases where any company is wound up in any part of the United Kingdom. The section conferring this jurisdiction is as follows :—

“The commissioners of the Court of Bankruptcy, and the judges of the County Courts in England, who sit at places more than twenty miles from the General Post Office, and the commissioners of bankrupt and the assistant barristers and recorders in Ireland, and the sheriffs of counties in Scotland, shall be commissioners for the purpose of taking evidence under this Act in cases where any company is wound up in any part of the United Kingdom, and it shall be lawful for the Court to refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed commissioner, although such commissioner is out of the jurisdiction of the Court that made the order or decree for winding up the company ; and every such commissioner shall, in addition to any power of summoning and examining witnesses, and requiring the production or delivery of documents, and certifying or punishing defaults by witnesses, which he might lawfully exercise as a commissioner of the Court of Bankruptcy, judge of a County Court, commissioner of bankrupt, assistant barrister, or recorder, or as a sheriff of a county, have in the matter so referred to him all the same powers of summoning and examining witnesses, and requiring the production or delivery of documents, and punishing defaults by witnesses, and allowing costs and charges and expenses to witnesses, as the Court which made the order for winding up the company has ; and the examination so taken shall be returned or reported to such last-mentioned Court in such manner as it directs.”—25 & 26 Vict. c. 89, s. 126.



## BOOK V.—DIVISION IV.

### PROCEEDINGS UNDER STATUTES CONFERRING AN ADMINISTRATIVE JURISDICTION.

#### CHAPTER VIII.

##### JURISDICTION AND PROCEEDINGS ON THE DISSOLUTION OF LITERARY AND SCIENTIFIC INSTITUTIONS.

IN the year 1854, an Act of Parliament—17 & 18 Vict. c. 112—was passed, to afford facilities for the establishment of literary and scientific institutions, and to provide for their regulation.

This Act may be cited by the short title given it by the following section :—

“ In all deeds, documents, proceedings, suits, and prosecutions, this Act may be cited and described by the name of “ *The Literary and Scientific Institutions Act, 1854.* ”—17 & 18 Vict. c. 112, s. 35.

The application of the Act is defined by the following section :—

“ The Act shall apply to every institution for the time being established for the promotion of science, literature, the fine arts, for adult instruction, the diffusion of useful knowledge, the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, of public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs ; provided, that the Royal Institution, and the London Institution for the Advancement of Literature and the Diffusion of Useful Knowledge, shall be exempt from the operation of this Act.”—17 & 18 Vict. c. 112, s. 33.

The members and governing bodies of societies within the Act are constituted as follows :—

“ For the purposes of this Act, a member of an institution shall be a person who, having been admitted therein according to the rules and regulations thereof, shall have paid a sub-

Literary and scientific Institutions regulated by Act of Parliament.

Short title.

*The Literary and Scientific Institutions Act, 1854,* s. 35.

To what societies the Act applies.

*The Literary and Scientific Institutions Act, 1854,* s. 33.

Who are members of societies within the Act.

*The Literary and Scientific Institutions Act, 1854,*  
s. 31.

—And who the governing body.

*Id.*, s. 32.

Jurisdiction of County Court in winding-up of literary and scientific institutions is twofold.

(1.) Jurisdiction if dispute arises in its winding-up to adjust the affairs of a literary or scientific institution.

*The Literary and Scientific Institutions Act, 1854,*  
s. 29.

(2.) Jurisdiction to distribute the surplus arising on the winding-up of a literary

“scription, or shall have signed the roll or list of members thereof; but in all proceedings under this Act no person shall be entitled to vote or be counted as a member whose current subscription shall be in arrear at the time.”—17 & 18 Vict. c. 112, s. 31.

“The governing body of the institution shall be the council, directors, committee, or other body to whom by Act of Parliament, charter, or the rules and regulations of the institution, the management of its affairs is entrusted; and if no such body shall have been constituted on the establishment of the institution, it shall be competent for the members thereof, upon due notice, to create for itself a governing body to act for the institution thenceforth.”—17 & 18 Vict. c. 112, s. 32.

The Act provides for the winding-up of institutions framed under its provisions, and confers upon the County Court certain jurisdiction with respect to such a winding-up. This jurisdiction is twofold; viz., (1) In cases where a dispute has arisen in the winding-up to adjust the affairs of the institution, or to direct proceedings to be taken in the Chancery Division of the High Court; and, (2) to determine what kindred institution shall receive the surplus arising on a winding-up.

(1) Jurisdiction to adjust the affairs of a literary or scientific institution, where a dispute has arisen in its winding-up, exists under the following enactment:—

“Any number not less than three-fifths of the members of any institution may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the institution, its claims and liabilities, according to the rules of the said institution applicable thereto, if any, and if not, then as the governing body shall find expedient; provided, that in the event of any dispute arising among the said governing body, or the members of the institution, the adjustment of its affairs shall be referred to the Judge of the County Court of the district in which the principal building of the institution shall be situated, and he shall make such order or orders in the matter as he shall deem requisite, or, if he find it necessary, shall direct that proceedings shall be taken in the Court of Chancery for the adjustment of the affairs of the institution.”—17 & 18 Vict. c. 112, s. 29.

(2) Secondly, the County Court also has jurisdiction to distribute, if the members cannot agree, any surplus which may arise on the winding-up of a literary or scientific institution. For it is provided:—

“If upon the dissolution of any institution there shall remain, after the satisfaction of all its debts and liabilities,

“any property whatsoever, the same shall not be paid to or distributed among the members of the said institution or any of them, but shall be given to some other institution to be determined by the members at the time of the dissolution, or in default thereof by the Judge of the County Court aforesaid (a); provided, however, that this clause shall not apply to any institution which shall have been founded or established by the contributions of shareholders in the nature of a joint stock company.”—17 & 18 Vict. c. 112, s. 30.

or scientific institution.

*The Literary and Scientific Institutions Act, 1854, s. 30.*

Proceedings under this Act should be taken “in the County Court of the district in which the principal building of the institution shall be situated” (a).

In what district the proceedings should be taken.

“The Literary and Scientific Institutions Act, 1854,” is not one to which special reference is made in “The County Court Rules, 1875.” Therefore, under Order XL. (b) of these rules, proceedings under this Act may be taken by plaint and summons, or by petition, entered in the matter of the particular institution, and also in the matter of the Act.

How proceedings taken.

It is directed (c) that the poundage in cases under the Act shall be estimated on the amount in dispute. The fees themselves are the same as in ordinary cases.

Fees.

The practice, either where a petition is presented, or an ordinary action is resorted to, can be ascertained from the Introductory Chapter to the present Book of this work (d).

Practice.

(a) See sect. 29, *supra*; sect. 30, *supra*, refers to the same County Court district as is mentioned in s. 29.

(b) Set out in full, *ante*, p. 887.

(c) See Appendix I.

(d) See *ante*, pp. 886 *et seq.*

## BOOK V.—DIVISION IV.

### PROCEEDINGS UNDER STATUTES CONFERRING AN ADMINISTRATIVE JURISDICTION.

#### CHAPTER IX.

##### JURISDICTION AND PROCEEDINGS UNDER “THE LOCAL LOANS ACT, 1875.”

Loans by local  
authorities  
regulated by  
statute.

LOANS contracted by local authorities are now (a) regulated by a statute (38 & 39 Vict. c. 83), which was passed in the year 1875.

Short title.

The statute referred to contains the following section :—

*The Local  
Loans Act,  
1875, s. 1.*

“This Act may be cited for all purposes as ‘The Local  
“ ‘Loans Act, 1875.’”—38 & 39 Vict. c. 83, s. 1.

Interpretation  
clause.

“The Local Loans Act, 1875,” contains the following  
interpretation clause :—

*The Local*

“For the purposes of this Act—

“ ‘Prescribed’ means prescribed by any Act passed either  
“ before or after the passing of this Act authorising a

- “A ‘rate’ means a rate the proceeds of which are applicable to public local purposes, and leviable on the basis of an assessment in respect of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other document requiring payment from some authority or officer, is or can be ultimately raised out of a rate, and the levy of a rate includes the issue and enforcement of any such precept, certificate, or document as aforesaid, and expressions relating to the levy and the assessment and making of a rate shall be construed accordingly :
- “‘Local rate’ means any rate as before defined which a local authority have power to levy or charge by way of mortgage or otherwise :
- “‘Security’ means any debenture, debenture stock, annuity certificate, coupon, or stock certificate to bearer issued under this Act :
- “‘Person’ includes a body of persons corporate or unincorporate :
- “‘Executors and administrators’ includes successors.”—  
38 & 39 Vict. c. 83, s. 34.

In towns and boroughs and in sanitary districts there exist local authorities, such as town councils and “Sanitary Authorities,” under “The Public Health Act, 1875,” by whom the powers of the Act can be exercised. Counties and parts of counties are, for the purposes of the Act, provided with a local authority by the enactment following :—

Who are  
“local authorities” under  
the Act.

“The justices of any county, liberty, riding, parts, or division of a county in general or quarter sessions assembled, issuing any securities under this Act shall, so far as relates to such securities, be deemed to be incorporated by the name of the justices of the county, liberty, riding, parts, or division of the county to which they belong, or by any other name by which such justices are ordinarily known, or by which they granted the said securities, and may sue and be sued in any action or other legal proceeding relating thereto by such corporate name.”—38 & 39 Vict. c. 83, s. 36.

—Incorporation of justices of counties, &c.

*The Local Loans Act, 1875, s. 36.*

It is provided that a local authority shall, in certain cases, be deemed to borrow under the Act. Such cases are defined by the following section :—

In what cases a local authority is to be deemed to borrow under the Act.

“A local authority shall be deemed to borrow, subject to the provisions of this Act, whenever it raises a loan by the issue of debentures or debenture stock or annuity certificates, purporting to be created under its powers, or partly in one way and partly in another ; subject to this proviso, that where a loan is directed to be raised by debentures or debenture stock or annuity certificates under this Act, the

*The Local Loans Act, 1875, s. 4.*

“prescribed mode only shall be adopted.”—38 & 39 Vict. c. 83, s. 4.

Power to borrow.

Another section of the Act (which it is unnecessary to give in full) enacts that any local authority may, if it thinks fit, notwithstanding any provision in any other Act of Parliament passed before “The Local Loans Act,” borrow in the manner provided by “The Local Loans Act” any loan which it is authorised to raise (*b*).

Outline of machinery of the Act.

A short outline of the borrowing machinery created by the Act may be useful. As will be noticed, section 4 of the Act refers to three classes of securities; namely (1), debentures; (2) debenture stock; and (3) annuity certificates. These three classes of securities are the subjects of various regulations contained in the Act (*c*). A debenture in which the principal sum is made payable to a person named therein, his executors, administrators, or assigns, is referred to in the act as a *nominal debenture*, and is transferable by writing in manner directed by the local authority (*d*). Debenture stock, in respect of which a stock certificate to bearer has not been issued, is in the Act referred to as *nominal debenture stock* (*e*); and an annuity certificate, in which the annual sum is made payable to a person named therein, his executors, administrators, or assigns, is in the Act referred to as a *nominal annuity certificate*, and is transferable by writing in manner directed by the local authority (*f*).

Nominal debenture.

Nominal debenture stock.

Nominal annuity certificate.

Registration of nominal securities.

The Act provides for a register of these *nominal securities*, as we shall presently have occasion to point out (*g*), and it is enacted that :—

Notice of trust not receivable.

“No notice of any trust, expressed, implied, or constructive, shall be received by the local authority, or by any registrar or officer of the local authority in relation to any security

“sent of the Local Government Board, make, and when made, add to, rescind, or alter, such rules as they think fit with respect to the following matters : *The Local Loans Act, 1875, s. 30.*

“(1.) The issue of coupons, the registry of securities, the mode of transferring securities not transferable by delivery, the fees, if any, to be charged in respect of registry and otherwise in respect of any security issued by them under this Act ; and,

“(2.) With respect to any matter or thing required for the purposes of carrying into effect this Act, and not inconsistent therewith.

“The local authority may also by such rules as aforesaid, add to, rescind, or alter any of the rules in the schedule hereto.

“Any general rules made by the local authority in pursuance of this section shall, so far as they are consistent with this Act, have the same force as if they were enacted therein.

“Provided, that any rules made, added to, rescinded, or altered in pursuance of this section shall not affect any securities issued in respect of any loan the date of which is prior to the date of such making, addition, rescission, or alteration.”—38 & 39 Vict. c. 83, s. 30.

“The Local Loans Act, 1875,” provides for the permissive issue by local authorities of securities under the sanction of the Local Government Board (*h*), and Trustees and the Public Works Loan Commissioners are empowered to invest on loans under the Act (*i*).

Loans under official sanction.

Investment on loans under the Act.

Discharge of loans.

The Act contains special provisions as to the discharge of loans, borrowed in manner provided by the Act (*k*). And there are various enactments, quite unnecessary to set out, as to *Coupons* (*l*), *Stock Certificates* (*m*), *Execution and Supply of Securities* (*n*), and as to *Forgery and Loss of Securities* (*o*).

“The Local Loans Act, 1875,” confers upon County Courts a twofold jurisdiction with regard to loans raised under its provisions. For it gives the County Court jurisdiction (1.) to appoint and remove a receiver when a local authority has made default in payment of not less than £500 for the time being due on or in respect of any security issued under the Act (*p*). (2.) To rectify a register of nominal securities, on the application of a person aggrieved, where the value of any security or

Jurisdiction of County Courts twofold.

(*h*) Sect. 26.

(*i*) Sects. 27, 28.

(*k*) Sects. 13, 14, 15, 16.

(*l*) Sects. 17, 18, 19.

(*m*) Sects. 20, 21.

(*n*) Sect. 22.

(*o*) Sects. 32, 33.

(*p*) Sect. 12, see *post*, pp. 1206—1207.

securities to which the application relates does not exceed £50 (q).

(1.) Jurisdiction of County Court to appoint a receiver on default by local authority to extent of £500.

*The Local Loans Act, 1875, s. 11.*

Action may be brought.

—Or a receiver appointed.

*The Local Loans Act, 1875, s. 12.*

The following are the sections of the Act which relate to the jurisdiction of the County Courts. *First*, as to remedy for non-payment of money :—

“The local authority shall pay or raise all sums for the time being due or authorised to be raised on or in respect of any security issued by them under this Act, and if default is made in payment of any sum so due, such sum shall be deemed to be a specialty debt due to the person entitled thereto from the local authority of such a nature that a mandamus will be granted to enforce the payment thereof ; and an action may be brought accordingly, in which a mandamus may be claimed.”—38 & 39 Vict. c. 83, s. 11.

“Where a local authority makes default for a period of twenty-one days in paying an amount of not less than five hundred pounds (whether in one sum or separate sums) for the time being due on or in respect of any security issued under this Act, the persons entitled to the said amount, or any of such persons, may, instead of or in addition to bringing an action or actions, apply to the County Court for the appointment of a receiver, and any receiver so appointed (subject to any direction which may be given by the Court) shall from time to time raise as hereinafter mentioned, by or out of the local rate or property charged, sufficient money to pay the amount the payment of which is so in default, and all sums due while he is receiver on or in respect of any such security, together with all costs, charges, and expenses incurred in or about the appointment of such receiver and the execution of his duties under this section, including a proper remuneration for his trouble, and shall render to the defaulting authority the



“to such conditions of sale and otherwise as the Court may direct.

“A County Court may appoint a receiver under this section with respect to any local rate levied, or any property situate wholly or partly within the jurisdiction of such Court, and may remove such receiver and appoint another in his stead, and so from time to time; and may make such orders and give such directions as to the powers and duties of the receiver, and otherwise as to the disposal of the moneys received by him, as may be thought fit for carrying this section into effect.”—38 & 39 Vict. c. 83, s. 12.

(2.) *Secondly.* The County Court also has jurisdiction in cases where the amount involved does not exceed £50 to rectify the register of nominal securities kept under the Act; such jurisdiction is regulated by the following sections of the Act:—

“A local authority issuing nominal debentures (*r*), nominal debenture stock (*r*), or nominal annuity certificates (*r*) under this Act, shall cause a register of such securities to be kept in one or more book or books, and there shall be entered in such register—

“(1.) The names and addresses and the descriptions of the owners for the time being of every such security, with a statement of the securities held by each person registered, and

“(2.) The date at which the name of any person was entered in the register in respect of any such security.

“The register under this section shall be evidence of any matters by this Act directed or authorised to be inserted therein.”—38 & 39 Vict. c. 83, s. 23.

“Any person may inspect the register at any reasonable time upon payment of such fee not exceeding one shilling as may be fixed by the local authority, and shall be entitled to obtain from the registrar, copies or extracts certified by him to be true copies or extracts of such register, upon payment of such fee not exceeding two shillings and sixpence, and twopence for every folio of seventy-two words, as the local authority may from time to time fix, and any copy or extract so certified shall be admissible in evidence.”—38 & 39 Vict. c. 83, s. 24.

“If the name of any person is without sufficient cause entered in or omitted from the register, or if default is made or unnecessary delay takes place in making any entry in such register, the person aggrieved or the local authority may apply to the Court for an order that the register may be rectified.

“The Court may either refuse the application with or

(2.) Jurisdiction to rectify the register of securities.

Register of nominal securities.

*The Local Loans Act, 1875, s. 23.*

Inspection of register.

*The Local Loans Act, 1875, s. 24.*

Rectification of register.

*The Local Loans Act, 1875, s. 25.*

“without costs to be paid by the applicant, or may, if satisfied of the justice of the case, whether there has or has not been any default on the part of the registrar, make an order for the rectification of the register, and make such order as to the payment of the costs of the application or of damages to the person aggrieved as to the Court may seem just.

“The Court may, in any proceeding under this section, decide any question relating to the title of any party to such proceeding to have his name entered in or omitted from the register, and generally any question which it may be necessary or expedient to decide for the rectification of the register.

“The Court for the purposes of this section means any of Her Majesty’s superior Courts of law or equity, or any Court to which the jurisdiction of such Courts may be transferred, and where the value of any security or securities to which the application relates does not exceed fifty pounds shall include a County Court, and the jurisdiction by this Act given to a superior Court may be exercised in a summary manner by any Judge or Judges of such Court sitting in chambers or otherwise.”—38 & 39 Vict. c. 83, s. 25.

**Parties.**

—To proceedings under s. 12.

—To proceedings under s. 25.

With reference to the proper parties to proceedings under the Act, the following remarks apply :—

The proper persons to apply for the appointment of a receiver under section 12 (*rr*) of the Act, are *the persons entitled to the sum of £500 from the local authority under a security issued by such local authority, or any of such persons.*

The proper person to apply, under section 25 of the Act, for the rectification of a register of nominal securities, is “*the person aggrieved or the local authority.*”

“ which the subject matter of the petition exceeds 100*l*.”—  
Order XXXIX. r. 36.

“ An application to the Judge of a County Court for the  
“ rectification of a register of nominal security under the pro- *The County*  
“ visions of section twenty-five of ‘The Local Loans Act, 1875,’ shall be made by petition, and the same procedure *Court Rules,*  
“ shall be followed, and the same fees be paid, and costs allowed, *1875, Order*  
“ as on any other petition to the Court in which the subject *XXXIX.*  
“ matter of the petition exceeds 20*l*. and does not exceed 100*l*.” *rule 37.*  
—Order XXXIX. r. 37.

Practice on a petition under “The Local Loans Act” can be *Practice.*  
learnt from the Introductory Chapter to the present Book of  
this work (*l*).


(*l*) See *ante*, p. 886 *et seq.*

## BOOK V.—DIVISION V.

### PROCEEDINGS UNDER STATUTES RELATING TO MATTERS OF PUBLIC CONCERN.

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OF late years the County Court has in several instances been constituted a tribunal for enquiry into matters of public concern, which may usefully be considered in the order of their date. It possesses, under "The Ballot Act, 1872," the same jurisdiction over the ballot papers used at a municipal election as the House of Commons exercises with respect to ballot papers at a parliamentary election. This jurisdiction will be the subject of the First Chapter of this Division. In the Second Chapter will be considered the jurisdiction to enquire into the competency and conduct of managers of coal mines holding certificates under "The Coal Mines Regulation Act, 1872." The County Court is also made the tribunal, under "The Explosives Act, 1875," for holding enquiries into accidents caused by explosives ; and these enquiries will be the subject of the Third Chapter of this Division. The power possessed by the County Court to make orders under "The Rivers Pollution Act, 1876," will be considered in the Fourth



## BOOK V.—DIVISION V.

### PROCEEDINGS UNDER STATUTES RELATING TO MATTERS OF PUBLIC CONCERN.

#### CHAPTER I.

##### JURISDICTION AND PROCEEDINGS UNDER "THE BALLOT ACT, 1872," WITH REGARD TO MUNICIPAL ELECTIONS.

THE Act commonly known as "The Ballot Act, 1872" (35 & 36 Vict. c. 33), applies both to parliamentary and to municipal elections. It gives no jurisdiction to the County Court with respect to Parliamentary elections, but with regard to *Municipal* elections it confers upon the County Court a jurisdiction which it is the subject of the present chapter to consider.

The Act contains two Schedules. Of these Schedules the first relates solely to Parliamentary elections. The second regulates Municipal elections, and by reference incorporates many of the provisions contained in the first schedule. With regard to both these schedules it is directed that :—

"The schedules to this Act, and the notes thereto, and directions therein, shall be construed and have effect as part of this Act."—35 & 36 Vict. c. 33, s. 28.

The jurisdiction given to the County Court being with respect to Municipal elections only, it is important to ascertain what are "municipal elections" within the meaning of the Act. On this subject it is declared as follows :—

"In this Act—

"The expression 'municipal borough' means any place for the time being subject to the Municipal Corporation Acts, or any of them :

"The expression 'Municipal Corporation Acts' means—

"(a.) As regards England, the Act of the session of the  
"fifth and sixth years of the reign of King  
"William the Fourth, chapter seventy-six,  
"intituled 'An Act to provide for the regulation of municipal corporations in England  
"and Wales,' and the Acts amending the  
"same."—35 & 36 Vict. c. 33, s. 29.

"The Ballot Act, 1872," gives the County Court jurisdiction as to municipal (but not as to parliamentary) elections.

Schedules to Act.

Schedules to be taken as part of the Act.

*The Ballot Act, 1872,* s. 28.

What is a "municipal election."

*The Ballot Act, 1872,* s. 29.

The poll at all municipal (and other) elections to be taken by ballot papers.

The Act requires that the votes at all municipal and other elections be taken by ballot. This is provided by the following sections of the Act :—

“ In the case of a poll at an election the votes shall be given by ballot. The ballot of each voter shall consist of a paper (in this Act called a ballot paper) showing the names and description of the candidates. Each ballot paper shall have a number printed on the back, and shall have attached a counterfoil with the same number printed on the face. At the time of voting, the ballot paper shall be marked on both sides with an official mark, and delivered to the voter within the polling station, and the number of such voter on the register of voters shall be marked on the counterfoil, and the voter having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in a closed box in the presence of the officer presiding at the polling station (in this Act called ‘the presiding officer’) after having shown to him the official mark at the back.

“ Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything, except the said number on the back, is written or marked by which the voter can be identified, shall be void and not counted.

“ After the close of the poll the ballot boxes shall be sealed up, so as to prevent the introduction of additional ballot papers, and shall be taken charge of by the returning officer, and that officer shall, in the presence of such agents, if any, of the candidates as may be in attendance, open the ballot boxes, and ascertain the result of the poll by counting the votes given to each candidate, and shall forthwith declare to be elected the candidates or candidate to whom the majority

“ sions of this Act and of the said schedules as relate to or are  
 “ concerned with a poll at a parliamentary election shall apply  
 “ to a poll at a contested municipal election : Provided as  
 “ follows :—

- “ (1.) The term ‘ returning officer ’ shall mean the mayor or  
 “ other officer who, under the law relating to  
 “ municipal elections, presides at such elections :  
 “ (2.) The term ‘ petition questioning the election or  
 “ ‘ return ’ shall mean any proceeding in which a  
 “ municipal election can be questioned :

- “ (5.) No return shall be made to the clerk of the Crown  
 “ in Chancery : . . .”—35 & 36 Vict. c. 33,  
 s. 20.

The poll having been taken, it becomes necessary to consider how the ballot papers used in taking it are to be disposed of. Directions on this subject are contained in Part II. of the Schedule to the Act. This Part II. of the Schedule commences with the following rule :—

“ In the application of the provisions of this schedule to  
 “ municipal elections the following modifications shall be  
 “ made :—

- “ (a.) The expression ‘ register of voters ’ means the  
 “ burgess roll of the burgesses of the borough,  
 “ or, in the case of an election for the ward of a  
 “ borough, the ward list ; and the mayor shall  
 “ provide true copies of such register for each  
 “ polling station :

- “ (b.) All ballot papers and other documents which, in  
 “ the case of a parliamentary election, are for-  
 “ warded to the clerk of the Crown in Chancery,  
 “ shall be delivered to the town clerk of the  
 “ municipal borough in which the election is  
 “ held, and shall be kept by him among the  
 “ records of the borough ; and the provisions of  
 “ part one of this schedule with respect to the  
 “ inspection, production, and destruction of such  
 “ ballot papers and documents, and to the copies  
 “ of such documents, shall apply respectively to  
 “ the ballot papers and documents so in the  
 “ custody of the town clerk, with these modifi-  
 “ cations ; namely,

- “ (a.) An order of the County Court  
 “ having jurisdiction in the borough, or any  
 “ part thereof, or of any tribunal in which a  
 “ municipal election is questioned, shall be  
 “ substituted for an order of the House of  
 “ Commons, or of one of Her Majesty’s  
 “ Superior Courts ; but an appeal from such

How ballot  
 papers dis-  
 posed of.

*Schedule to  
 The Ballot  
 Act,  
 rule 64.*

*The Ballot  
Act, 1872.  
Sched I.  
Part II.  
rule 64.*

“ County Court may be had in like manner as  
“ in other cases in such County Court ;

“ (b.) The regulations for the inspection of  
“ documents and the fees for the supply of  
“ copies of documents of which copies are  
“ directed to be supplied, shall be prescribed  
“ by the council of the borough with the con-  
“ sent of one of Her Majesty’s principal secre-  
“ taries of state ; and, subject as aforesaid,  
“ the town clerk, in respect of the custody  
“ and destruction of the ballot papers and  
“ other documents coming into his possession  
“ in pursuance of this Act, shall be subject to  
“ the directions of the council of the borough :

“ (c.) Nothing in this schedule with respect to the day of  
“ the poll shall apply to a municipal election.”  
—35 & 36 Vict. c. 33, Sched. I. Part II. r. 64.

*Schedule to  
The Ballot  
Act,  
rule 37.*

“ Upon the completion of the counting, the returning officer  
“ shall seal up in separate packets the counted and rejected  
“ ballot papers. He shall not open the sealed packet of  
“ tendered ballot papers or marked copy of the register of  
“ voters and counterfoils, but shall proceed, in the presence of  
“ the agents of the candidates, to verify the ballot paper  
“ account given by each presiding officer, by comparing it with  
“ the number of ballot papers recorded by him as aforesaid,  
“ and the unused and spoilt ballot papers in his possession, and  
“ the tendered votes list, and shall re-seal each sealed packet  
“ after examination. The returning officer shall report to  
“ the (a) ‘ town clerk of the municipal borough in which the  
“ ‘ election is held ’ the result of such verification, and shall, on  
“ request, allow any agents of the candidates, before such



“ the date of the election to which they relate, and the name of  
 “ the county or borough for which such election was held ; and  
 “ the term poll book in any such enactment shall be construed  
 “ to include any document forwarded in pursuance of this  
 “ rule.”—35 & 36 Vict. c. 33, Schedule I. (Part I.), r. 38.

“ The (a) ‘ town clerk of the municipal borough in which the  
 “ ‘ election is held,’ shall retain for a year all documents  
 “ relating to an election forwarded to him in pursuance of this  
 “ Act by a returning officer, and then, unless otherwise directed  
 “ by an order of the (b) ‘ County Court having jurisdiction in  
 “ ‘ the borough or any part thereof, or any tribunal before  
 “ ‘ which a municipal election is questioned,’ shall cause them to  
 “ be destroyed.”—35 & 36 Vict. c. 33, Schedule I. (Part I.), r. 39.

*Schedule to  
 The Ballot  
 Act, 1872,  
 rule 39.*

“ No person shall be allowed to inspect any rejected ballot  
 “ papers in the custody of the town clerk of the municipal  
 “ borough in which the election is held (c), except under the  
 “ order of the ‘ County Court having jurisdiction in the borough  
 “ ‘ or any part thereof, or any tribunal in which a municipal  
 “ ‘ election is questioned ’ (d), to be granted by such Court on  
 “ being satisfied by evidence on oath that the inspection or  
 “ production of such ballot papers is required for the purpose  
 “ of instituting or maintaining a prosecution for an offence in  
 “ relation to ballot papers, or for the purpose of a petition  
 “ questioning an election or return ; and any such order for  
 “ the inspection or production of ballot papers may be made  
 “ subject to such conditions as to persons, time, place, and  
 “ mode of inspection or production as the (e) . . . Court  
 “ making the same may think expedient, and shall be obeyed  
 “ by the ‘ town clerk of the municipal borough in which the  
 “ election is held ’ (f). Any power given to a Court by this  
 “ rule may be exercised by any Judge of such Court at  
 “ chambers.”—35 & 36 Vict. c. 33, Sched. I. Part I. r. 40 (g).

*Schedule to  
 The Ballot  
 Act, 1872,  
 rule 40.*

“ No person shall, except by order of the ‘ County Court

(a) The words in the original rule here are “ Clerk of the Crown in Chancery,” but the words between inverted commas, are substituted as directed by Rule 64, Clause (b) set out above on p. 1213, and with sect. 20 sub-sect. 5 of the Act, which directs that on a Municipal Election, no return shall be made to the Clerk of the Crown in Chancery.

(b) The words in the original are, “ House of Commons, or under the order of one of Her Majesty’s Superior Courts,” but the words between inverted commas are substituted as directed by Rule 64, Clause (b), sub-clause (a), set out on p. 1213.

(c) The words in the original rule here, are “ the Clerk of the Crown in Chancery,” but the words between inverted commas are for convenience, substituted for those in accordance with Rule 64, Clause (b), above set out, and with section 20, sub-sect. 5 of the Act, which directs that on a Municipal Election no returns shall be made to the Clerk of the Crown in Chancery.

(d) The words in the original are, “ House of Commons, or under the order of one of Her Majesty’s Superior Courts,” but the words between inverted commas are substituted as directed by Rule 64, Clause (b), sub-clause (a), above set out.

(e) The words “ House, or,” are here omitted.

(f) See *ante*, note (c).

(g) As to the effect of this rule, see *Reg. v. Beardsall*, L. R. 1 Q. B. Div. 452.

*Schedule to  
The Ballot  
Act, 1872,  
rule 41.*

“ ‘having jurisdiction in the borough or any part thereof’ (*h*), or  
“ ‘any tribunal having cognizance of petitions complaining of  
“ ‘undue returns or undue elections, open the sealed packet of  
“ ‘counterfoils after the same has been once sealed up, or be  
“ ‘allowed to inspect any counted ballot papers in the custody of  
“ ‘the ‘town clerk of the municipal borough in which the election  
“ ‘is held’ (*i*) ; such order may be made subject to such conditions  
“ ‘as to persons, time, place, and mode of opening or inspection  
“ ‘as the (*k*) . . . tribunal making the order may think ex-  
“ ‘pedient ; provided that on making and carrying into effect  
“ ‘any such order, care shall be taken that the mode in which  
“ ‘any particular elector has voted shall not be discovered until  
“ ‘he has been proved to have voted, and his vote has been  
“ ‘declared by a competent Court to be invalid.’—35 & 36 Vict.  
c. 33, Sched. I. Part I. r. 41.

*Schedule to  
The Ballot  
Act, 1872,  
rule 42.*

“ All documents forwarded by a returning officer in pursu-  
“ ‘ance of this Act to the ‘town clerk of the municipal borough  
“ ‘in which the election is held’ (*l*), other than ballot papers and  
“ ‘counterfoils, shall be open to public inspection at such time  
“ ‘and under such regulations as may be prescribed by the ‘town  
“ ‘clerk of the municipal borough in which the election is  
“ ‘held’ (*m*), and the town clerk of the municipal borough in  
“ ‘which the election is held’ (*l*) shall supply copies of or extracts  
“ ‘from the said documents to any person demanding the same,  
“ ‘on payment of such fees and subject to such regulations as  
“ ‘may be sanctioned by the Treasury.

*Schedule to  
The Ballot  
Act, 1872,  
rule 43.*

“ Where an order is made for the production by the ‘town  
“ ‘clerk of the municipal borough in which the election is  
“ ‘held’ (*l*) of any document in his possession relating to any  
“ ‘specified election, the production by such clerk or his agent  
“ ‘of the document ordered, in such manner as may be directed

“printed number and having a number marked thereon in writing, shall be *primâ facie* evidence that the person who voted by such ballot paper was the person who at the time of such election had affixed to his name in the register of voters at such election the same number as the number written on such counterfoil.”—35 & 36 Vict. c. 33, Sched. I. Part I. r. 43.

The effect of the above provisions may be shortly stated as follows. They confer jurisdiction on the County Court :—(1.) To order, subject to certain conditions which the Court may impose, the inspection of any rejected ballot papers, if satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return (*n*); (2.) To order, subject to certain conditions, sealed packets of counterfoils to be opened, and for the inspection of counted ballot papers in the custody of the clerk of the Crown in Chancery (*o*).

Effect of  
above pro-  
visions.

The powers of a County Court, under this statutory rule, have recently been discussed, in the case of *Reg. v. Beardsall*.

*Reg. v.*  
*Beardsall.*

In that case, a prosecution had been instituted against a deputy-returning officer for offences under “The Ballot Act, 1872,” it was held that, on application on behalf of the prosecution, a County Court Judge had power to make an order upon the town clerk of the borough, directing him to produce and show, for the purpose of the said prosecution, certain rejected ballot papers, and spoilt ballot papers relating to the polling station over which such deputy-returning officer had presided, and to open the sealed packets containing those documents, and the marked copy of the register, and to take all such proper means as he should deem necessary in order that the mode in which any particular elector had voted should not be discovered; and that no person should be allowed to see the face of the counted ballot papers (*p*).

The Ballot Act, 1872, is not one of the Acts specially mentioned in “The County Court Rules and Orders, 1875.” It consequently would appear to follow that the practice in cases under it is governed by Order XL. (*q*), which directs that under statutes not otherwise provided for in the rules and orders the proceedings may be either by petition or by action, commenced by plaint or summons in the ordinary mode. Should either of these modes of proceedings be resorted to the practice will be found detailed on a preceding page. It is submitted that under rule 40, above set out (*r*), an order may also be obtained on application made in a summary way to a County Court Judge.

Practice.

(*n*) 35 & 36 Vict. c. 33, first schedule, Part I. r. 40, see *ante*, p. 1215, and see *The Queen v. Beardsall*, L. R. 1 Q. B. D. 452, cited *infra*.

(*o*) *Ibid*, r. 41, see *infra*.

(*p*) *The Queen v. Beardsall*, L. R. 1 Q. B. D. 452.

(*q*) Set out in full, *ante*, p. 887.

(*r*) *Supra*, p. 1215.

Form of  
order.

The form of order at the hearing will require to be modified in such case according to the circumstances, but the order made in the case of *Reg. v. Beardsall* (above cited) will be found a useful general precedent (s).

(s) The Form of Order in the case referred to, was as follows:—

“ THE BALLOT ACT, 1872.

“ The Corrupt Practices (Municipal Elections) Act, 1872. In the County Court of Cheshire, holden at Stockport, the 25th day of February, 1876.

“ In the matter of prosecutions against Joseph Beardsall, for personation and other offences against the Ballot Act, alleged to have been committed by him as presiding officer at the election of town councillors for Heaton Norris ward, in the borough of Stockport, held on the 1st day of November, 1875.

“ Upon hearing Mr. Frances Newton solicitor on behalf of George Massey the prosecutor, and the said Joseph Beardsall, and being satisfied by evidence on oath that the inspection and production of the under-mentioned election documents are required for the purpose of instituting or maintaining a prosecution against the said Joseph Beardsall, for an offence or offences in relation to ballot papers, it is ordered that Mr. Walter Hyde, the town clerk for the said borough of Stockport, do produce and show for inspection to the said George Massey, and his solicitor or agent, on Thursday, the 2nd day of March, 1876, at such hour as the said town clerk shall appoint, and such other days and hours as may be convenient to the said town clerk, at the Court House, in Vernon Street, in the said borough, the under-mentioned documents and papers, and also, after being served with a summons or subpœna for that purpose, to produce and show the same for inspection at any time or times as may be required under the summons or subpœna in any Court as evidence for the purpose of maintaining the said prosecutions against the said Joseph Beardsall for the offences aforesaid.

“ 1. The rejected ballot papers relating to the said election for Heaton Norris Ward.

“ 2. The counterfoils of the ballot papers marked by the presiding officer in Booth A to B, relating to the said election.

“ 3. The counted ballot papers relating to the said election, particularly the ballot papers corresponding to the following numbers written on the said counterfoils [stating certain numbers].

“ 4. The spoilt ballot papers relating to the same polling station.

“ And it is further ordered for the purposes aforesaid, that the said town clerk do cause to be opened the sealed packets containing the said rejected ballot papers, the counterfoils of the ballot papers used at polling station A to B relating to the said election, the marked copy of the register used in the same polling station, the counted ballot papers, the spoilt ballot papers relating to

## BOOK V.—DIVISION V.

### PROCEEDINGS UNDER STATUTES RELATING TO MATTERS OF PUBLIC CONCERN.

#### CHAPTER II.

##### ENQUIRIES UNDER THE COAL MINES REGULATION ACT, 1872.

“THE Coal Mines Regulation Act, 1872”—35 & 36 Vict. c. 76—consolidates and amends the law relating to the regulation and inspection of coal mines, mines of stratified ironstone, mines of shale, and mines of fire-clay (*a*). It regulates the employment in mines of women, young persons, and children (*b*), and the employment of persons, in contravention of the provisions of the Act, is visited with penalties (*c*). Moreover, the Act contains a series of regulations as to the mode of working mines, and provides for the establishment in every mine of special rules, calculated to prevent dangerous accidents, for the guidance of persons acting in the management of mines (*d*). A copy of such special rules, certified by an inspector under the Act, is made evidence of such special rules and of the fact that they are duly established under the Act, and have been signed by the inspector (*e*). Every mine is placed under the control and daily supervision of a manager appointed by the owner or agent of the mine (*f*), and such manager must be registered as the holder of a certificate of competency under the Act, which is granted by examiners appointed by a secretary of state (*g*), except in the case of persons who were acting as managers at the time of the passing of the Act as to whom certificates of service are granted by a secretary of state (*h*). A secretary of state may direct an inquiry into

Outline of  
“The Coal  
Mines Regu-  
lation Act,  
1872.”

- (*a*) See Preamble; and see sect. 3 and sect. 70.
- (*b*) Part I.
- (*c*) Sect. 15; and see Part III.
- (*d*) Part II.; and see sect. 52.
- (*e*) Sect. 59.
- (*f*) Sect. 26.
- (*g*) Sects. 26 and 27.
- (*h*) Sect. 31.

the competency of certificated managers, as will presently be seen (i). The Act provides likewise for the appointment, by a secretary of state, of inspectors of mines (k). Any such inspector is referred to in the Act as an inspector, and the inspector of a district means the inspector who is for the time being assigned to the district, a portion of the United Kingdom with reference to which the term is used (l). The powers and duties of inspectors are thus defined by the Act :—

Powers of  
inspectors.

*The Coal  
Mines Regu-  
lation Act,  
1872, s. 45.*

“ An inspector under this Act shall have power to do all or  
“ any of the following things ; namely,

“ (1.) To make such examination and inquiry as may  
“ be necessary to ascertain whether the pro-  
“ visions of this Act relating to matters above  
“ ground or below ground are complied with in  
“ the case of any mine to which this Act  
“ applies :

“ (2.) To enter, inspect, and examine any mine to which  
“ this Act applies, and every part thereof, at all  
“ reasonable times by day and night, but so as  
“ not to impede or obstruct the working of the  
“ said mine :

“ (3.) To examine into and make inquiry respecting the  
“ state and condition of any mine to which this  
“ Act applies, or any part thereof, and the venti-  
“ lation of the mine, and the sufficiency of the  
“ special rules for the time being in force in the  
“ mine, and all matters and things connected  
“ with or relating to the safety of the persons  
“ employed in or about the mine or any mine  
“ contiguous thereto :

“ (4.) To exercise such other powers as may be necessary

“ person, such inspector may give notice in writing thereof to the owner, agent, or manager of the mine, and shall state in such notice the particulars in which he considers such mine, or any part thereof, or any matter, thing, or practice, to be dangerous or defective, and require the same to be remedied ; and unless the same be forthwith remedied the inspector shall also report the same to a Secretary of State.

*The Coal  
Mines Regu-  
lation Act,  
1872, s. 46.*

“ If the owner, agent, or manager of the mine objects to remedy the matter complained of in the notice he may, within twenty days after the receipt of such notice, send his objection in writing, stating the grounds thereof, to a Secretary of State ; and thereupon the matter shall be determined by arbitration in manner provided by this Act ; and the date of the receipt of such objection shall be deemed to be the date of the reference.

“ If the owner, agent, or manager fail to comply either with the requisition of the notice, where no objection is sent within the time aforesaid, or with the award made on arbitration, within twenty days after the expiration of the time for objection or the time of making of the award (as the case may be), he shall be guilty of an offence against this Act, and the notice and award shall respectively be deemed to be written notice of such offence.

“ Provided that the Court, if satisfied that the owner, agent, or manager has taken active measures for complying with the notice or award, but has not, with reasonable diligence, been able to complete the works, may adjourn any proceedings taken before them for punishing such offence, and if the works are completed within a reasonable time, no penalty shall be inflicted.

“ No person shall be precluded by any agreement from doing such acts as may be necessary to comply with the provisions of this section, or be liable under any contract to any penalty or forfeiture for doing such acts.”—35 & 36 Vict. c. 76, s. 46.

“ The owner, agent, or manager of every mine to which this Act applies shall keep in the office at the mine an accurate plan of the workings of such mine, and showing the workings up to at least six months previously.

*Plans of mines  
to be kept  
by owner,  
&c.*

“ The owner, agent, or manager of the mine shall produce to an inspector under this Act at the mine, such plan, and shall, if requested by the inspector, mark on such plan the progress of the workings of the mine up to the time of such production, and shall allow the inspector to examine the same ; but the inspector is not hereby authorised to make a copy of any part of such plan.

*The Coal  
Mines Regu-  
lation Act,  
1872, s. 47.*

“ If the owner, agent, or manager of any mine to which this Act applies fails to keep such plan as is prescribed by this section, or wilfully refuses to produce or allow to be examined such plan, or wilfully withholds any portion of any plan, or

“conceals any part of the workings of his mine, or produces an imperfect or inaccurate plan, unless he shows that he was ignorant of such concealment, imperfection, or inaccuracy, he shall be guilty of an offence against this Act; and, further, the inspector may, by notice in writing (whether a penalty for such offence has or has not been inflicted), require the owner, agent, or manager to cause an accurate plan, such as is prescribed by this section, to be made within a reasonable time, at the expense of the owner of the mine, on a scale of not less than a scale of two chains to one inch, or on such other scale as the plan then used in the mine is constructed on.

“If the owner, agent, or manager fail within twenty days, or such further time as may be shown to be necessary, after the requisition of the inspector to make or cause to be made such plan, he shall be guilty of an offence against this Act.”—35 & 36 Vict. c. 76, s. 47.

Inspector to make an annual report and special reports as directed.

*The Coal Mines Regulation Act, 1872, s. 48.*

“Every inspector under this Act shall make an annual report of his proceedings during the preceding year to a Secretary of State, which report shall be laid before both Houses of Parliament.

“A Secretary of State may at any time direct an inspector to make a special report with respect to any accident in a mine to which this Act applies, which accident has caused loss of life or personal injury to any person, and in such case shall cause such report to be made public at such time and in such manner as he thinks expedient.”—35 & 36 Vict. c. 76, s. 48.

Jurisdiction of the County Court.

The jurisdiction of the County Courts, under “The Coal Mines Act,” may be summarised in a very few words. The



- “ point by such County Court Judge, metropoli-  
 “ tan police magistrate, stipendiary magistrate,  
 “ or other person or persons, as may be directed  
 “ by the Secretary of State, and either alone or  
 “ with the assistance of any assessor or assessors  
 “ named by the Secretary of State :
- “ (2.) The Secretary of State shall, before the commence-  
 “ ment of the inquiry, furnish to the manager a  
 “ statement of the case upon which the inquiry  
 “ is instituted :
- “ (3.) Some person appointed by the Secretary of State  
 “ shall undertake the management of the case :
- “ (4.) The manager may attend the inquiry by himself, his  
 “ counsel, attorney, or agent, and may, if he  
 “ think fit, be sworn and examined as an ordinary  
 “ witness in the case :
- “ (5.) The persons appointed to hold the inquiry, in this  
 “ Act referred to as the Court, shall, upon the  
 “ conclusion of the inquiry, send to the Secre-  
 “ tary of State a report containing a full state-  
 “ ment of the case, and their opinion thereon,  
 “ and such report of, or extracts from the  
 “ evidence, as the Court think fit :
- “ (6.) The Court shall have power to cancel or suspend  
 “ the certificate of the manager, if they find that  
 “ that he is by reason of incompetency or gross  
 “ negligence, or of his having been convicted of  
 “ an offence against this Act, unfit to discharge  
 “ his duty :
- “ (7.) The Court may, if they think fit, require a manager  
 “ to deliver up his certificate, and if any manager  
 “ fail, without sufficient cause to the satisfaction  
 “ of the Court, to comply with such requisition,  
 “ he shall be liable to a penalty not exceeding  
 “ one hundred pounds. The Court shall hold  
 “ a certificate so delivered until the conclusion  
 “ of the investigation, and shall then either  
 “ restore, cancel, or suspend the same, according  
 “ to their judgment on the case :
- “ (8.) The Court shall have for the purpose of the inquiry,  
 “ all the powers of a court of summary jurisdic-  
 “ tion, and all the powers of an inspector under  
 “ this Act (*m*).  
 “ (9.) The Court may also, by summons under their  
 “ hands, require the attendance of all such persons  
 “ as they think fit to call before them and examine  
 “ for the purpose of the inquiry, and every

(*m*) As to powers and duties of Inspectors, see *ante*, pp. 1220—1222.

“person so summoned shall be allowed such expenses as would be allowed to a witness attending on subpoena before a court of record; and in case of dispute as to the amount to be allowed, the same shall be referred by the Court to a master of one of the superior Courts, who, on request under the hands of the members of the Court, shall ascertain and certify the proper amount of such expenses.”—35 & 36 Vict. c. 76, s. 32.

Fees to officers.

“The Coal Mines Regulation Act, 1872,” as will presently be seen (*n*), provides that “*The Secretary of State may, if he think fit, pay to the members of the Court of Inquiry, including any assessors, such remuneration as he may, with the consent of the Treasury appoint.*” It is submitted that the County Court Judge comes within the scope of this enactment, though not expressly named.

How proceedings commenced under the Act.

Proceedings under the Act, against a manager, are commenced by the inspector, or any other person, making a representation of misconduct against such manager to a Secretary of State (*o*). If the Secretary of State thinks fit, he acts upon the representation so made to him and causes an inquiry to be made into the manager’s conduct, as provided by the Act (*p*).

Preparations for the enquiry.

As we have seen (*q*) the Court of Inquiry may, by summons under their hands, require the attendance of all such persons as they think fit to call before them and examine for the purpose of the inquiry, and every person so summoned shall be allowed such expenses as would be allowed to a witness attending on subpoena before a Court of Record; and in case of dispute as to the amount to be allowed, the same shall be referred by the Court to a master of one of the superior Courts who, on

management of the case (*u*). And it is also provided that the manager may attend the inquiry by himself, his counsel, attorney, or agent, and may, if he think fit, be sworn and examined as an ordinary witness in the case (*x*). And at the time the Court may, if they think fit, require the manager to deliver up his certificate, and his refusal to comply with the requisition of the Court in this respect renders him liable to a penalty not exceeding £100 (*y*). The Court holds the certificate so delivered until the conclusion of the investigation, and shall then either restore, cancel, or suspend the same, according to their judgment on the case (*z*).

The Court has power to cancel or suspend the certificate of the manager, if they find that he is by reason of incompetency or gross negligence, or of his having been convicted of an offence against this Act, unfit to discharge his duty (*a*).

Power over the costs of the inquiry is given by the following enactment:—

“The Court may make such order as they think fit respecting the costs and expenses of the inquiry, and such order shall, on the application of any party entitled to the benefit of the same, be enforced by any Court of summary jurisdiction as if such costs and expenses were a penalty imposed by such Court.

“The Secretary of State may, if he think fit, pay to the members of the Court of Inquiry, including any assessors, such remuneration as he may with the consent of the Treasury appoint.

“Any costs and expenses ordered by the Court to be paid by a Secretary of State, and any remuneration paid under this section, shall be paid out of moneys provided by Parliament.”—35 & 36 Vict. c. 76, s. 33.

Upon the conclusion of the inquiry the Court sends to the Secretary of State a report containing a full statement of the case, and their opinion thereon, and such report of or extracts from the evidence, as the Court shall think fit (*b*).

Provision for the recording the cancellation, or suspension of a certificate is made as follows:—

“Where a certificate of a manager is cancelled or suspended in pursuance of this Act, a Secretary of State shall cause such cancellation or suspension to be recorded in the register of holders of certificates.

“A Secretary of State may at any time, if it is shown to him to be just so to do, renew or restore, on such terms as he think fit, any certificate which has been cancelled or suspended in pursuance of this Act.”—35 & 36 Vict. c. 76, s. 34.

*The Coal  
Mines Regu-  
lation Act,  
1872, s. 33.*

Cancellation  
or suspension  
of a certifi-  
cate to be  
recorded.

*The Coal  
Mines Regu-  
lation Act,  
1872, s. 34.*

(*u*) 35 & 36 Vict. c. 76, s. 32, subsect. (3), *ante*, p. 1223.

(*x*) *Ib.*, subsect. (4), *ante*, p. 1223.

(*y*) 35 & 36 Vict. c. 76, s. 32, subsect. (7), *ante*, p. 1223.

(*z*) *Ib.*

(*a*) 35 & 36 Vict. c. 76, s. 32, subsect. (6), *ante*, p. 1223.

(*b*) *Ib.*, subsect. (5), *ante*, p. 1223.

## BOOK V.—DIVISION V.

### PROCEEDINGS UNDER STATUTES RELATING TO MATTERS OF PUBLIC CONCERN.



#### CHAPTER III.

##### ENQUIRIES UNDER “THE EXPLOSIVES ACT, 1875.”

Explosive  
substances  
governed by  
legislature.

*The Explosives Act,  
1875.*

Short title.  
s. 1.

Interpretation  
clause.

*The Explosives Act,  
1875, s. 3.*

THE statute law now contains various minute regulations as to explosive substances ; such regulations relate alike to the manufacture and to the storage of such substances.

An Act of Parliament passed in the year 1875 (38 Vict. c. 17), contains, for the most part, the provisions now in force with regard to explosives. A short title is given the Act by the following section of it :—

“This Act may be cited as ‘The Explosives Act, 1875.’”  
—38 Vict. c. 17, s. 1.

The Act in question also contains the following interpretation clause :—

“This Act shall apply to gunpowder and other explosives as defined by this section.

“The term ‘explosive’ in this Act

from the operation of the Act. Thus, government magazines, &c. (*b*), and floating magazines in the Mersey (*c*), are within this exemption. And there is, likewise, a saving clause for rocket and fog stations, &c. (*d*), for rockets, gunpowder, &c., on board ship in compliance with 17 & 18 Vict. c. 104 (*e*), and for masters of ships and carriers in case of emergency (*f*).

"The Explosives Act, 1875," is divided into four parts, of which Part I. contains the law relating to gunpowder, and Part II. the law relating to *other* explosives; while Part III. treats of the administration of law; and Part IV. is headed "Supplemental Provisions, Legal Proceedings, Exemptions, and Definitions."

With regard to gunpowder, "The Explosives Act, 1875," regulates its manufacture and the mode of keeping it (*g*), and provides that a new factory or magazine shall not be established except on the site, and in the manner specified in a license for the same granted by the Act (*h*). Existing factories and magazines for gunpowder do not lawfully exist within the meaning of the Act, unless the occupier thereof obtain, in manner provided by the Act, what is termed a continuing certificate, in respect of such factory or magazine (*i*). The Act also provides for the licensing and regulation of consumers' stores for gunpowder (*k*), regulates the retail dealing with gunpowder (*l*), and contains restrictions with regard to the sale (*m*) and conveyance (*n*) of gunpowder.

—As to gunpowder.

With regard to explosives *other than gunpowder*, "The Explosives Act, 1875," provides that, subject to the provisions of Part II. of the Act, the provisions of Part I. relating to gunpowder shall apply to every other description of explosive (*o*). Part II., however, modifies to a certain extent, and as regards explosives other than gunpowder, the provisions of Part I. relating to gunpowder (*p*). It empowers the Queen, by Order in Council, to prohibit the manufacture, importation, storage, and carriage of specially dangerous explosives (*q*); and it contains provisions in favour of certain manufacturers, dealers (*r*),

—As to explosives other than gunpowder.

(*b*) 38 Vict. c. 17, s. 97.

(*c*) *Ib.*, s. 99.

(*d*) *Ib.*, s. 98.

(*e*) *Ib.*, s. 101.

(*f*) *Ib.* s. 100.

(*g*) Part I.

(*h*) Sect. 6.

(*i*) Sect. 14.

(*k*) Sects. 15, 19.

(*l*) Sects. 21, 22.

(*m*) Sects. 30—32.

(*n*) Sects. 33—38.

(*o*) Sect. 39.

(*p*) Sect. 40.

(*q*) Sect. 43.

(*r*) Sects. 44—50.

—As to appointment of inspectors.

—Power to enter on and inspect factories and stores of explosives.

*The Explosives Act, 1875, s. 55.*

and with regard to the application of the Act to existing factories and magazines (*s*).

In order that the provisions of "The Explosives Act, 1875," may be effectually carried out, government inspectors are authorised to be appointed (*t*).

Extensive powers are conferred (*u*). The principal of such powers are as follow :—

"A government inspector shall have power to make such examination and inquiry as may be necessary to ascertain whether this Act is complied with, and for that purpose,—

"(1.) He may enter, inspect, and examine any factory, magazine, or store of any explosive, and every part thereof, at all times by day and night, but so as not to unnecessarily impede or obstruct the work in such factory, magazine, or store, and may make inquiries as to the observance of this Act, and all matters and things relating to the safety of the public, or of the persons employed in or about such factory, magazine, or store ; and

"(2.) He may enter, inspect, and examine any premises registered under this Act, and every part thereof, in which any explosive is kept, or is reasonably supposed by him to be kept, at all reasonable times by day ; and

"(3.) He may require the occupier of any factory, magazine, store, or premises which he is entitled, under this section, to enter, or a person employed by such occupier therein, to give him samples of any explosive or ingredients of an explosive therein, or of any substance therein.

"this Act, shall be liable to a penalty not exceeding one hundred pounds for each offence."—38 Vict. c. 17, s. 55.

In addition to the powers conferred upon government inspectors by this section, they are authorised, (1) to search for explosives when in a place in contravention of the Act (*x*); (2) to seize and detain explosives which are liable to forfeiture (*y*); (3) to inspect and examine at any time the wharf, carriage, ship, or boat of any carrier, or other person, who conveys goods for hire, or of the occupier of any factory, magazine, or store, or of the importer of any explosive, on or in which wharf, carriage, ship, or boat he has reasonable cause to suppose an explosive to be, for the purpose of or in course of conveyance, but so as not to obstruct business without necessity (*z*).

—Other powers.

A section in "The Explosives Act, 1875," requiring notice to be given of accidents connected with explosives, is as follows:—

"Whenever there occurs any accident by explosion or by fire in or about or in connexion with any factory, magazine, or store, or any accident by explosion or by fire causing loss of life or personal injury in or about or in connexion with any registered premises, the occupier of such factory, magazine, store, or premises shall forthwith send, or cause to be sent, notice of such accident, and of the loss of life or personal injury (if any) occasioned thereby to the Secretary of State. A notice of any accident of which notice is sent in pursuance of this section to a government inspector need not be sent to any inspector or sub-inspector of factories or any inspector of mines.

—Notice of accidents by explosion on registered premises to be given to the Secretary of State.

*The Explosives Act, 1875, s. 63.*

"Where in, about, or in connexion with any carriage, ship, or boat, either conveying an explosive, or on or from which an explosive is being loaded or unloaded, there occurs any accident by explosion or by fire, causing loss of life or personal injury, or if the amount of explosive conveyed or being so loaded or unloaded exceeds in the case of gunpowder half a ton, and in the case of any other explosive the prescribed amount, any accident by explosion or by fire, the owner or master of such carriage, ship, or boat, and the owner of the explosive conveyed therein, or being loaded or unloaded therefrom, or one of them, shall forthwith send, or cause to be sent notice of such accident, and of the loss of life or personal injury, if any, occasioned thereby, to the Secretary of State.

"Every such occupier, owner, or master as aforesaid who fails to comply with this section, shall be liable to a penalty not exceeding twenty pounds."—38 Vict. c. 17, s. 63.

(*x*) Sect. 73.

(*y*) Sect. 74.

(*z*) Sect. 75.

*Jurisdiction  
given to  
County Court  
Judge to hold,  
if ordered by  
Home Secretary,  
an inquiry into  
such accident.  
The Explosives  
Act,  
1875, s. 66.*

The Act, by a subsequent section, confers jurisdiction upon the County Court to hold, if so directed by a Secretary of State, an enquiry into any accident of which, by the section just set out, notice is required to be given to the Secretary of State. The power to hold such inquiry is conferred by the following section :—

“ The Secretary of State may direct an inquiry to be made  
“ by a government inspector into the cause of any accident  
“ which is caused by an explosion or fire either in connection  
“ with any explosive, or of which notice is required by this  
“ Act to be given to the Secretary of State ; and where it  
“ appears to the Secretary of State, either before or after the  
“ commencement of any such inquiry, that a more formal in-  
“ vestigation of the accident, and of the causes thereof, and of  
“ the circumstances attending the same, is expedient, the  
“ Secretary of State may by order direct such investigation to  
“ be held, and with respect to such inquiry and investigation  
“ the following provisions shall have effect :

“ (1.) The Secretary of State may, by the same or any  
“ subsequent order, appoint any person or per-  
“ sons possessing legal or special knowledge to  
“ assist the Government inspector in holding the  
“ formal investigation, or may direct the County  
“ Court judge, stipendiary magistrate, metro-  
“ politan police magistrate, or other person or  
“ persons named in the same or any subsequent  
“ order, to hold the same with the assistance of  
“ a Government inspector or any other assessor  
“ or assessors named in the order :

“ (2.) The persons holding any such formal investigation  
“ (in this section referred to as the Court) shall  
“ hold the same in open court in such manner



“ hands require the attendance of all such  
 “ persons as they think fit to call before them  
 “ and examine for the said purpose, and may  
 “ for such purpose require answers or returns  
 “ to such inquiries as they think fit to  
 “ make :

“ (c.) They may require the production of  
 “ all books, papers, and documents which  
 “ they consider important for the said pur-  
 “ pose :

“ (d.) They may administer an oath, and  
 “ require any person examined to make  
 “ and sign a declaration of the truth of the  
 “ statements made by him in his examina-  
 “ tion :

“ (e.) Persons attending as witnesses before  
 “ the Court shall be allowed such expenses as  
 “ would be allowed to witnesses attending before  
 “ a Court of record ; and in case of dispute  
 “ as to the amount to be allowed, the same  
 “ shall be referred by the Court to a master of  
 “ one of the superior Courts, who, on request  
 “ under the hands of the members of the  
 “ Court, shall ascertain and certify the proper  
 “ amount of such expenses :

“ (4.) The Government inspector making an inquiry into  
 “ any accident, and the Court holding an in-  
 “ vestigation of any accident under this section,  
 “ shall make a report to the Secretary of State,  
 “ stating the causes of the accident, and all the  
 “ circumstances attending the same, and any  
 “ observations thereon, or on the evidence or on  
 “ any matters arising out of the inquiry or in-  
 “ vestigation which he or they think right to  
 “ make to the Secretary of State, and the Secre-  
 “ tary of State shall cause every such report to  
 “ be made public in such manner as he thinks  
 “ expedient :

“ (5.) All expenses incurred in and about an inquiry or  
 “ investigation under this section shall be  
 “ deemed to be part of the expenses of the  
 “ Secretary of State in carrying this Act into  
 “ execution ; and

“ (6.) Any person who without reasonable excuse (proof  
 “ whereof shall lie on him) either fails, after  
 “ having had the expenses (if any) to which he  
 “ is entitled tendered to him, to comply with  
 “ any summons or requisition of a Court holding  
 “ an investigation under this Act, or prevents

“or impedes such Court in the execution of  
 “their duty, shall for every such offence incur a  
 “penalty not exceeding ten pounds, and in the  
 “case of a failure to comply with a requisition  
 “for making any return or producing any  
 “document, not exceeding ten pounds during  
 “every day that such failure continues.”—  
 38 Vict. c. 17, s. 66.

—Effect of  
 above section.

The jurisdiction of the County Court judge, under the above section, only arises, it will be observed, when he is directed by the Secretary of State to hold an inquiry; in short, the authority of such Judge is *solely* derived from the order of the Secretary of State, and he cannot hold such an inquiry, *mero motu*, or at the request of any other person than the Secretary of State. It is also to be noticed that the power of the Secretary of State himself to direct an inquiry is somewhat limited, for his power only extends over accidents “caused by an explosion or fire either in connection with any explosive, or of which notice is required by this Act to be given to the Secretary of State.” Section 66 of “The Explosives Act, 1875,” provides that “the Court shall have for the purposes of such investigation all the powers of a Court of Summary Jurisdiction when acting as a Court in hearing informations for offences against this Act, and all the powers of a Government inspector under this Act.” This provision appears to be somewhat vague, though it is doubtless very comprehensive. The following sections of “The Explosives Act, 1875,” indicate what are the powers expressly conferred by the Act upon a Court of Summary Jurisdiction.

Powers of  
 Court in an  
 inquiry under  
 the Act.

—Power to

“Every offence under this Act may be prosecuted and every

“any period not exceeding six months.”—38 Vict. c. 17, s. 91.

“Where a person is accused before a court of summary jurisdiction of any offence under this Act, the penalty for which offence as assigned by this Act, exclusive of forfeiture, exceeds one hundred pounds, the accused may, on appearing before the court of summary jurisdiction, declare that he objects to be tried for such offence by a court of summary jurisdiction, and thereupon the court of summary jurisdiction may deal with the case in all respects as if the accused were charged with an indictable offence and not an offence punishable on summary conviction, and the offence may be prosecuted on indictment accordingly.”—38 Vict. c. 17, s. 92.

Power of offender in certain cases to elect to be tried on indictment and not by summary jurisdiction. *The Explosives Act*, 1875, s. 92.

“If any party feels aggrieved by any summary order made by a court of summary jurisdiction under this Act, or by any order or conviction made by a court of summary jurisdiction in determining any complaint or information under this Act, by which order or conviction the sum adjudged to be paid, including costs, and including the value of any forfeiture, exceeds twenty pounds, the party so aggrieved may appeal therefrom to quarter sessions, in manner provided with respect to an appeal to quarter sessions by section one hundred and ten of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-six.”—38 Vict. c. 17, s. 93.

Appeal to quarter sessions. *The Explosives Act*, 1875, s. 93.

“Where the owner or master of a ship or boat is adjudged to pay a penalty for an offence committed with or in relation to such ship or boat, the Court may, in addition to any other power they may have for the purpose of compelling payment of such penalty, direct the same to be levied by distress or arrestment and sale of the said ship or boat and her tackle.”—38 Vict. c. 17, s. 95.

Distress of ship. *The Explosives Act*, 1875, s. 95.

“All penalties imposed in pursuance of this Act by a court of summary jurisdiction upon the prosecution of a Government inspector shall, notwithstanding anything in any other Act, be paid into the receipt of Her Majesty’s Exchequer, in such manner as the Treasury may from time to time direct, and be carried to the Consolidated Fund.

Application of penalties and disposal of forfeitures. *The Explosives Act*, 1875, s. 96.

“Any explosive or ingredient forfeited in pursuance of this Act may be sold, destroyed, or otherwise disposed of in such manner as the Court declaring the forfeiture, or the Secretary of State, may direct, and the proceeds of any such sale or disposal shall be paid, applied, and accounted for in like manner as penalties under this Act.

“The receptacle containing any such explosive or ingredient may be forfeited, sold, destroyed, or otherwise disposed of, in like manner as the contents thereof.

“The provisions of Part Three of this Act with respect to

“ an explosive, or ingredient of an explosive, seized in pursuance  
“ of this Act, and to the officer seizing, removing, detaining,  
“ keeping, or conveying, or otherwise dealing with the same,  
“ shall apply to any explosive and ingredient declared by any  
“ Court to be forfeited, and to the officer removing, detaining,  
“ keeping, conveying, selling, destroying, or otherwise dis-  
“ posing of the same.

“ The Court declaring the forfeiture, or the Secretary of  
“ State directing the sale or other disposal of any forfeited  
“ explosive or ingredient, and the receptacles thereof, may  
“ require the owner of such explosive or ingredient to per-  
“ mit the use of any ship, boat, or carriage containing such  
“ explosive or ingredient for the purpose of such sale or disposal,  
“ upon payment of a reasonable compensation for the same, to  
“ be determined in case of dispute by a court of summary  
“ jurisdiction ; and where the explosive or ingredient is directed  
“ to be destroyed, the owner and the person having possession  
“ of such explosive or ingredient, and the owner and master of  
“ the ship, boat, or carriage containing the same, or some or one  
“ of them, shall destroy the same accordingly, and if the Court  
“ or Secretary of State so order, the ship, boat, or carriage may  
“ be detained until the same is so destroyed ; and if the  
“ Secretary of State is satisfied that default has been made  
“ in complying with any such direction by him or by a Court,  
“ and that the detention of the ship, boat, or carriage will not  
“ secure the safety of the public, and that it is impracticable,  
“ having regard to the safety of the public or of the persons  
“ employed in such destruction, to effect the same without  
“ using such ship, boat, or carriage, or otherwise dealing with such  
“ ship, boat, or carriage, in like manner as if it were a receptacle  
“ for an explosive forfeited under this Act, the Secretary of State

without reasonable excuse, to comply with any such summons or requisition, shall for every offence incur a penalty not exceeding £10 (*d*). Provision is made for the expenses of witnesses (*e*).

The Court likewise has power to require the production of all books, papers, and documents which they consider important for the investigation (*f*). And in case of a failure to comply with a requisition for making any return, or producing any document, the person guilty of the same is liable to a penalty not exceeding £10 during every day that such failure continues (*g*).

—Power to require production of documents.

An inquiry under the Act is required to be held in open Court, in such manner and under such conditions as the Court may think most effectual for ascertaining the causes and circumstances of the accident, and enabling them to make the report in this section mentioned (*h*).

Trial and judgment.

The Court itself is composed of the County Court Judge and the Government inspector, or any other assessor or assessors named in the order of the Secretary of State (*i*).

—Tribunal to conduct inquiry.

The Court has power, in addition to those already stated (*k*), to administer an oath and require any person examined to make and sign a declaration of the truth of the statements made by him in his examination (*l*).

—Power to administer oaths.

(*d*) 38 Vict. c. 17, s. 66, subsect. (6), *ante*, pp. 1231—1232.

(*e*) *Ib.*, subsect. (3) (*e*), *ante*, pp. 1230—1231.

(*f*) *Ib.*, subsect. (3) (*e*), *ante*, pp. 1230—1231.

(*g*) *Ib.*, subsect. (6), *ante*, pp. 1231—1232.

(*h*) *Ib.*, subsect. (2), *ante*, p. 1230.

(*i*) *Ib.*, subsect. (1), *ante*, p. 1230.

(*k*) *Ante*, p. 1232 *et seq.*

(*l*) 38 Vict. c. 17, s. 66, subsect. (3) (*d*), *ante*, p. 1230.

## BOOK V.—DIVISION V.

### PROCEEDINGS UNDER STATUTES RELATING TO MATTERS OF PUBLIC CONCERN.



#### CHAPTER IV.

##### PROCEEDINGS UNDER “THE RIVERS POLLUTION ACT, 1876,” TO PREVENT THE POLLUTION OF RIVERS.

Rivers pro-  
tected from  
pollution.

*The Rivers  
Pollution  
Act, 1876.*

Short title.  
s. 1.

Interpretation  
clause.

*The Rivers  
Pollution*

It has been the endeavour of modern legislation to secure, as far as possible, that rivers shall not in future be polluted, and especially that no new sources of pollution shall henceforward be created.

The legislation upon this subject is contained in an Act of Parliament (39 & 40 Vict. c. 75), which was passed in the year 1876. A short title is given to this Act by the following section in it :—

“This Act may be cited for all purposes as ‘The Rivers Pollution Prevention Act, 1876.’”—39 & 40 Vict. c. 75, s. 1.

The Act also contains the following interpretation clause :—

“In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively

“ In the metropolis as defined by ‘The Metropolis Management Act, 1855,’ any local authority acting in the execution of ‘The Nuisances Removal for England Act, 1855,’ and the Acts amending the same ;

“ Elsewhere in England, any urban or rural sanitary authority acting in the execution of ‘The Public Health Act, 1875.’”—39 & 40 Vict. c. 75, s. 20.

The Act contains the following *saving clauses*, by which certain rights and powers are excluded from its operation :—

*Saving clauses of the Act.*

“ The powers given by this Act shall not be deemed to pre-judice or affect any other rights or powers now existing or vested in any person or persons by Act of Parliament, law, or custom, and such other rights or powers may be exercised in the same manner as if this Act had not passed ; and nothing in this Act shall legalise any act or default which would but for this Act be deemed to be a nuisance or otherwise contrary to law : Provided nevertheless, that in any proceedings for enforcing against any person such rights or powers the Court before which such proceedings are pending shall take into consideration any certificate granted to such person under this Act.”—39 & 40 Vict. c. 75, s. 16.

*The Rivers Pollution Act, 1876, s. 16.*

“ This Act shall not apply to or affect the lawful exercise of any rights of impounding or diverting water.”—39 & 40 Vict. c. 75, s. 17.

*Id., s. 17.*

“ Nothing in or done under this Act shall extend to interfere with, take away, abridge, or prejudicially affect any right, power, authority, jurisdiction, or privilege given by ‘The Thames Conservancy Acts, 1857 and 1864,’ or by ‘The Thames Navigation Act, 1866,’ or by ‘The Lea Conservancy Act, 1868,’ or any Act or Acts extending or amending the said Acts or either of them, or affect any outfall or other works of the Metropolitan Board of Works (although beyond the metropolis) executed under ‘The Metropolis Management Act, 1855,’ and the Acts amending or extending the same, or take away, abridge, or prejudicially affect any right, power, authority, jurisdiction, or privilege of the Metropolitan Board of Works.”—39 & 40 Vict. c. 75, s. 18.

*Id., s. 18.*

“ Where any local authority or any urban or rural sanitary authority has been empowered or required by any Act of Parliament to carry any sewage into the sea or any tidal waters, nothing done by such authority in pursuance of such enactment, shall be deemed to be an offence against this Act.”—39 & 40 Vict. c. 75, s. 19.

*Id. s. 19.*

It has been remarked (a), with reference to this Act, that :  
“ The scheme of this Act is, speaking generally, to prohibit altogether the putting of solid matters into streams ; to prohibit

*Scope of the Act.*

(a) See Fitzgerald’s “ Rivers Pollution Prevention Act, 1876,” p. 4.

the establishment of new sources of sewage and manufacturing pollutions: to render compulsory the adoption of the best practicable and available means for rendering harmless polluting matters in the case of sewage and manufacturing pollution existing at the date of the passing of the Act, and in the case of mining pollutions: and to provide a cheap and ready County Court process for enforcing the provisions of the Act."

Prohibitions  
imposed by  
the Act.

The *scope* of the Act, as just indicated, is carried into effect by certain specific *prohibitions* which it imposes. These are contained in Parts I., II., and III. of the Act.

Part I., which is comprised of *one section* only, explains the law as to *solid* matters. The section dealing with this subject is as follows:—

Prohibitions  
against put-  
ting solid  
matters into  
streams.

*The Rivers  
Pollution  
Act, 1876,  
s. 2.*

"Every person who puts or causes to be put or to fall or knowingly permits to be put or to fall or to be carried into any stream, so as either singly or in combination with other similar acts of the same or any other person to interfere with its due flow, or to pollute its waters, the solid refuse of any manufactory, manufacturing process or quarry, or any rubbish or cinders, or any other waste or any putrid solid matter, shall be deemed to have committed an offence against this Act.

"In proving interference with the due flow of any stream, or in proving the pollution of any stream, evidence may be given of repeated acts which together cause such interference or pollution, although each act taken by itself may not be sufficient for that purpose."—39 & 40 Vict. c. 75, s. 2.

Effect of this  
section.

It is to be noticed that this section would appear to deal with *solid matter generally*. For, it is submitted, that though it mentions, in the first place, "*the solid refuse of any manu-*



would appear to render a person liable not for his *own acts* only, but likewise for the acts of *other persons* who are in his employment, provided he "*knowingly permits*" such acts, and even, therefore, it would seem, though he did not *expressly* authorise such acts. At all events, the words used, as has been pointed out (c), are sufficient to "meet the case of persons "who place solid matter on land in such a position, that it "will be washed into a stream by floods."

The present section also facilitates the *proof* of obstruction or pollution of a stream by providing that "*evidence may be given of repeated acts which together cause such interference or pollution, although each act taken by itself may not be sufficient for that purpose.*"

Part II. of the Act deals with the "*Law as to Sewage Pollutions.*" Like Part I. it consists of a single section, which is as follows:—

"Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream any solid or liquid sewage matter, shall (subject as in this Act mentioned) be deemed to have committed an offence against this Act.

Prohibitions  
against drain-  
age into  
streams of  
sewers.

"Where any sewage matter falls or flows or is carried into any stream along a channel used, constructed, or in process of construction at the date of the passing of this Act for the purpose of conveying such sewage matter, the person causing or knowingly permitting the sewage matter so to fall or flow or to be carried shall not be deemed to have committed an offence against this Act if he shows to the satisfaction of the Court having cognisance of the case that he is using the best practicable and available means to render harmless the sewage matter so falling or flowing or carried into the stream.

*The Rivers  
Pollution  
Act, 1876,  
s. 3.*

"Where the Local Government Board are satisfied after local inquiry that further time ought to be granted to any sanitary authority, which at the date of the passing of this Act is discharging sewage matter into any stream, or permitting it to be so discharged, by any such channel as aforesaid, for the purpose of enabling such authority to adopt the best practicable and available means for rendering harmless such sewage matter, the Local Government Board may by order declare that this section shall not, so far as regards the discharge of sewage matter by such channel be in operation until the expiration of a period to be limited in the order.

"Any order made under this section may be from time to time renewed by the Local Government Board, subject to such conditions, if any, as they may see fit.

"A person other than a sanitary authority shall not be guilty of an offence under this section in respect of the

(c) Fitzgerald's "Rivers Pollution Prevention Act, 1876," p. 18.

"passing of sewage matter into a stream along a drain communicating with any sewer belonging to or under the control of any sanitary authority, provided he has the sanction of the sanitary authority for so doing."—39 & 40 Vict. c. 75, s. 3.

—Unless the best practicable and available means taken to render the sewage harmless.

The prohibition contained in the above section is, however, as regards channels in use at the date of the Act, not absolute, and does not apply where the best practicable and available means have been taken to render the sewage-matter harmless. And in conjunction with the above enactment there must be read the following sections which provide a ready means of obtaining proof that "the best practicable and available means" have been taken to render the sewage harmless. The sections referred to provide as follows:—

"A certificate granted by an inspector of proper qualifications appointed for the purposes of this Act by the Local Government Board to the effect that the means used for rendering harmless any sewage-matter or poisonous, noxious, or polluting solid or liquid matter falling or flowing or carried into any stream, are the best or only practicable and available means under the circumstances of the particular case, shall in all Courts and in all proceedings under this Act be conclusive evidence of the fact; such certificate shall continue in force for a period to be named therein, not exceeding two years, and at the expiration of that period may be renewed for the like or any less period.

—As to which, certificate may be granted by an inspector.

*The Rivers Pollution Act, 1876,*  
s. 12.

"All expenses incurred in or about obtaining a certificate under this section shall be paid by the applicant for the same.

"Any person aggrieved by the grant or the withholding of a certificate under this section may appeal to the Local Government Board against the decision of the inspector; and the board may either confirm, reverse, or modify his decision, and may make such order as to the party or parties by whom the costs of the appeal are to be borne as to the said board may appear just."—39 & 40 Vict. c. 75, s. 12.

—Inspectors under Act have power to inspect places and to examine witnesses, &c.

*The Rivers Pollution Act, 1876,*  
s. 15.

And directions may be given as to costs of any inquiry.

"Inspectors of the Local Government Board shall, for the purposes of any inquiry directed by the board under this Act, have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which the inspectors of the said board have under 'The Public Health Act, 1875,' for the purposes of that Act."—39 & 40 Vict. c. 75, s. 15.

"The Local Government Board may make orders as to the costs incurred by them in relation to inquiries instituted by them under this Act, and as to the parties by whom such costs shall be borne; and every such order and every order for the payment of costs made by the said board under sec-

"tion twelve of this Act may be made a rule of Her Majesty's High Court of Justice."—39 & 40 Vict. c. 75, s. 14.

Again, the prohibition contained in section 3 has no application to a person whose sewage—though otherwise within the prohibition—passes, with the consent of a local authority, through a drain belonging to such local authority and so gets into a stream.

Subject to the two modifications just pointed out, *i.e.* those as to the use of old drains and of drains belonging to a sanitary authority, the effect of section 12 of the Act appears to be as follows: the section prohibits *solid or liquid sewage-matter* only, from being introduced into streams. Like the preceding section the present enactment is directed against *permissive* acts as well as against those which are *active*. But, unlike the preceding section, it does not prohibit *such* a fall or flow of the prohibited matter as will amount to an *obstruction* or *pollution* of a stream. For the offence is complete no matter what quantity has been introduced into the stream. Consequently, no proof of obstruction or pollution need be given in cases under the present section.

Part III. of the Act deals with the "*Law as to Manufacturing and Mining Pollutions*." It consists of three sections, which are in the following terms:—

"Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream any poisonous, noxious, or polluting liquid proceeding from any factory or manufacturing process shall (subject as in this Act mentioned) be deemed to have committed an offence against this Act.

"Where any such poisonous, noxious, or polluting liquid as aforesaid falls or flows or is carried into any stream along a channel used, constructed, or in process of construction at the date of the passing of this Act, or any new channel constructed in substitution thereof, and having its outfall at the same spot, for the purpose of conveying such liquid, the person causing or knowingly permitting the poisonous, noxious, or polluting liquid so to fall or flow or to be carried shall be deemed to have committed an offence against this Act if he shows to the satisfaction of the Court having cognizance of the case that he is using the best practicable and reasonably available means to render harmless the poisonous, noxious, or polluting liquid so falling or flowing or carried into the stream."—39 & 40 Vict. c. 75, s. 4.

Every sanitary or other local authority having sewers under control shall give facilities for enabling manufacturers in their district to carry the liquids proceeding from their factories or manufacturing processes into such sewers: provided that this section shall not extend to compel any factory or other local authority to admit into their sewers

*The Rivers Pollution Act, 1876, s. 14.*

—Or unless the matter passed through a sewer belonging to a local authority.

Effect of above sections prohibiting drainage into streams.

Prohibition against letting into streams noxious liquids from factories. *The Rivers Pollution Act, 1876, s. 4.*

“passing of sewage matter into a stream along a drain communicating with any sewer belonging to or under the control of any sanitary authority, provided he has the sanction of the sanitary authority for so doing.”—39 & 40 Vict. c. 75, s. 3.

—Unless the best practicable and available means taken to render the sewage harmless.

The prohibition contained in the above section is, however, as regards channels in use at the date of the Act, not absolute, and does not apply where the best practicable and available means have been taken to render the sewage-matter harmless. And in conjunction with the above enactment there must be read the following sections which provide a ready means of obtaining proof that “the best practicable and available means” have been taken to render the sewage harmless. The sections referred to provide as follows:—

“A certificate granted by an inspector of proper qualifications appointed for the purposes of this Act by the Local Government Board to the effect that the means used for rendering harmless any sewage-matter or poisonous, noxious, or polluting solid or liquid matter falling or flowing or carried into any stream, are the best or only practicable and available means under the circumstances of the particular case, shall in all Courts and in all proceedings under this Act be conclusive evidence of the fact; such certificate shall continue in force for a period to be named therein, not exceeding two years, and at the expiration of that period may be renewed for the like or any less period.

—As to which, certificate may be granted by an inspector.

“All expenses incurred in or about obtaining a certificate under this section shall be paid by the applicant for the same.

*The Rivers Pollution*

“Any person aggrieved by the grant or the withholding of a certificate under this section may appeal to the Local Government Board within three calendar months after the date of the grant or withholding of the certificate.”

"tion twelve of this Act may be made a rule of Her Majesty's High Court of Justice."—39 & 40 Vict. c. 75, s. 14.

Again, the prohibition contained in section 3 has no application to a person whose sewage—though otherwise within the prohibition—passes, with the consent of a local authority, through a drain belonging to such local authority and so gets into a stream.

Subject to the two modifications just pointed out, *i.e.* those as to the use of old drains and of drains belonging to a sanitary authority, the effect of section 12 of the Act appears to be as follows: the section prohibits *solid or liquid sewage-matter* only, from being introduced into streams. Like the preceding section the present enactment is directed against *permissive* acts as well as against those which are *active*. But, unlike the preceding section, it does not prohibit *such* a fall or flow of the prohibited matter as will amount to an *obstruction or pollution* of a stream. For the offence is complete no matter what quantity has been introduced into the stream. Consequently, no proof of obstruction or pollution need be given in cases under the present section.

Part III. of the Act deals with the "*Law as to Manufacturing and Mining Pollutions.*" It consists of three sections, which are in the following terms:—

"Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream any poisonous, noxious, or polluting liquid proceeding from any factory or manufacturing process shall (subject as in this Act mentioned) be deemed to have committed an offence against this Act.

"Where any such poisonous, noxious, or polluting liquid as aforesaid falls or flows or is carried into any stream along a channel used, constructed, or in process of construction at the date of the passing of this Act, or any new channel constructed in substitution thereof, and having its outfall at the same spot, for the purpose of conveying such liquid, the person causing or knowingly permitting the poisonous, noxious, or polluting liquid so to fall or flow or to be carried shall not be deemed to have committed an offence against this Act if he shows to the satisfaction of the Court having cognizance of the case that he is using the best practicable and reasonably available means to render harmless the poisonous, noxious, or polluting liquid so falling or flowing or carried into the stream."—39 & 40 Vict. c. 75, s. 4.

"Every sanitary or other local authority having sewers under their control shall give facilities for enabling manufacturers within their district to carry the liquids proceeding from their factories or manufacturing processes into such sewers:

"Provided that this section shall not extend to compel any sanitary or other local authority to admit into their sewers

*The Rivers Pollution Act, 1876, s. 14.*

—Or unless the matter passed through a sewer belonging to a local authority.

Effect of above sections prohibiting drainage into streams.

Prohibition against letting into streams noxious liquids from factories.

*The Rivers Pollution Act, 1876, s. 4.*

—Which the local authority shall admit into their sewers.

*The Rivers Pollution Act, 1876,*  
s. 7.

—And also against letting in mine-water.

*The Rivers Pollution Act, 1876,*  
s. 5.

Proceedings as to noxious liquids from factories or as to mine-water only to be taken

“any liquid which would prejudicially affect such sewers or the disposal by sale, application to land, or otherwise, of the sewage matter conveyed along such sewers, or which would from its temperature or otherwise be injurious in a sanitary point of view :

“Provided also, that no sanitary authority shall be required to give such facilities as aforesaid where the sewers of such authority are only sufficient for the requirements of their district, nor where such facilities would interfere with any order of any Court of competent jurisdiction respecting the sewage of such authority.”—39 & 40 Vict. c. 75, s. 7.

“Every person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream any solid matter from any mine in such quantities as to prejudicially interfere with its due flow, or any poisonous, noxious, or polluting solid or liquid matter proceeding from any mine, other than water in the same condition as that in which it has been drained or raised from such mine, shall be deemed to have committed an offence against this Act, unless in the case of poisonous, noxious, or polluting matter he shows to the satisfaction of the Court having cognisance of the case that he is using the best practicable and reasonably available means to render harmless the poisonous, noxious, or polluting matter so falling or flowing or carried into the stream.”—39 & 40 Vict. c. 75, s. 5.

Proceedings under Part III. of the Act can at present only be taken by a sanitary authority, *and* with the consent of the Local Government Board. For it is enacted :—

“Unless and until Parliament otherwise provides the following enactments shall take effect, proceedings shall not be taken against any person under this part of this (*d*) Act save

“ by the sanitary authority of any district which is the seat of  
 “ any manufacturing industry, unless they are satisfied, after  
 “ due inquiry, that means for rendering harmless the poisonous,  
 “ noxious, or polluting liquids proceeding from the processes of  
 “ such manufactures are reasonably practicable and available  
 “ under all the circumstances of the case, and that no material  
 “ injury will be inflicted by such proceedings on the interests  
 “ of such industry.

“ Any person within such district as aforesaid, against whom  
 “ proceedings are proposed to be taken under this part of this  
 “ Act, shall, notwithstanding any consent of the Local Govern-  
 “ ment Board, be at liberty to object before the sanitary autho-  
 “ rity to such proceedings being taken, and such authority  
 “ shall, if required in writing by such person, afford him an  
 “ opportunity of being heard against such proceedings being  
 “ taken, so far as the same relate to his works or manufacturing  
 “ processes. The sanitary authority shall thereupon allow such  
 “ person to be heard by himself, agents, and witnesses, and  
 “ after inquiry such authority shall determine, having regard  
 “ to all the considerations to which the Local Government  
 “ Board are by this section directed to have regard, whether  
 “ such proceedings as aforesaid shall or shall not be taken; and  
 “ where any such sanitary authority has taken proceedings  
 “ under this Act, it shall not be competent to other sanitary  
 “ authorities to take proceedings under this Act till the party  
 “ against whom such proceedings are intended shall have failed  
 “ in reasonable time to carry out the order of any competent  
 “ Court under this Act.”—39 & 40 Vict. c. 75, s. 6.

Such being the prohibitions contained in “ The Rivers Pollu-  
 tion Act,” the statute proceeds to confer upon the County  
 Court jurisdiction to make a summary order, requiring any  
 person to abstain from the commission of any offence against  
 the Act: and where such offence consists in default to perform  
 a duty under the Act, the Court may require the offender to  
 perform such duty in manner in the said order specified (e).  
 Such jurisdiction is conferred by the following enactment.

The following is the section of the Act which confers juris-  
 diction on the County Courts in respect of offences against the  
 Act itself:—

“ The County Court having jurisdiction in the place where  
 “ any offence against this Act is committed may by summary  
 “ order require any person to abstain from the commission of  
 “ such offence, and where such offence consists in default to  
 “ perform a duty under this Act may require him to perform  
 “ such duty in manner in the said order specified; the Court  
 “ may insert in any order such conditions as to time or mode

Jurisdiction  
 of the County  
 Court to  
 enforce the  
 Act.

*The Rivers  
 Pollution  
 Act, 1876,  
 s. 10.*

“ of action as it may think just, and may suspend or rescind  
 “ any order on such undertaking being given or condition being  
 “ performed as it may think just, and generally may give such  
 “ directions for carrying into effect any order as to the Court  
 “ seems meet. Previous to granting such order the Court may,  
 “ if it think fit, remit to skilled parties to report on the ‘best  
 “ ‘practicable and available means’ and the nature and cost of  
 “ the works and apparatus required, who shall in all cases take  
 “ into consideration the reasonableness of the expense involved  
 “ in their report.

“ Any person making default in complying with any require-  
 “ ment of an order of a County Court made in pursuance of  
 “ this section shall pay to the person complaining, or such other  
 “ person as the Court may direct, such sum, not exceeding fifty  
 “ pounds a day for every day during which he is in default, as  
 “ the Court may order ; and such penalty shall be enforced in  
 “ the same manner as any debt adjudged to be due by the  
 “ Court ; moreover, if any person so in default persists in dis-  
 “ obeying any requirement of any such order for a period of  
 “ not less than a month or such other period less than a month  
 “ as may be prescribed by such order, the Court may in addition  
 “ to any penalty it may impose appoint any person or persons  
 “ to carry into effect such order, and all expenses incurred by  
 “ any such person or persons to such amount as may be allowed  
 “ by the County Court shall be deemed to be a debt due from  
 “ the person in default to the person or persons executing such  
 “ order, and may be recovered accordingly in the County  
 “ Court.”—39 & 40 Vict. c. 75, s. 10 (f).

Effect of  
 section 10.

It is submitted that this section gives the County Court  
 jurisdiction *unlimited by any pecuniary amount*. And it is to



be noticed, that if the defendant makes default in complying with any requirement of an order of a County Court, made in pursuance of this section, the Court *may* direct him to pay the *maximum* penalty of £50 a day *for every day during which he is in default*. So that the effect of the County Court order may sometimes be to require payment from a defendant of a sum greatly exceeding that which is the limit of the jurisdiction of the County Court in *ordinary* cases. Such penalty is to be enforced in the same manner as any debt adjudged to be due by the Court. And it is worthy of remark that such penalty is payable "*to the person complaining, or such other person as the Court may direct.*" Moreover, it is also to be noticed, that, where the Court appoints any person or persons to carry its order into effect, *all* expenses incurred by any such person or persons are recoverable in the County Court. These expenses will, no doubt, frequently *exceed* the limit of the *ordinary* jurisdiction of the County Court.

It is necessary to consider who should be parties to proceedings under the Act.

As regards the proper persons to institute proceedings, it is provided that :—

"Every sanitary authority shall, subject to the restrictions in this Act contained, have power to enforce the provisions of this Act in relation to any stream being within or passing through or by any part of their district, and for that purpose to institute proceedings in respect of any offence against this Act which causes interference with the due flow within their district of any such stream, or the pollution within their district of any such stream, against any other sanitary authority or person, whether such offence is committed within or without the district of the first-named sanitary authority.

"Any expenses incurred by a sanitary authority in the execution of this Act shall be payable as if they were expenses properly incurred by that authority in the execution of 'The Public Health Act, 1875.'

"Proceedings may also, subject to the restrictions in this Act contained, be instituted in respect of any offence against this Act by any person aggrieved by the commission of such offence."—39 & 40 Vict. c. 75, s. 8.

With reference to this section, it would seem, from the language employed, that the *same* offence may be the subject of several independent and simultaneous proceedings, instituted under the Act, by *different* sanitary authorities and parties aggrieved against the *same* defendant in those, *perhaps rare*, cases in which the consequences of the *same* offence are obstructions or pollutions of *different* parts of the *same* stream, where such different parts happen to be within *different* sanitary districts.

Whether this was the intention of the Legislature may, per-

Parties to proceedings.

—As plaintiffs.

*The Rivers Pollution Act, 1876,* s. 8.

Effect of above section.

haps, admit of some doubt. But, at all events, the inconvenience of the suggested construction is diminished by Order V. rule 1, of "The County Court Rules, 1875," which, in the case of actions in the County Court, provides, as has been seen in an early chapter (*g*), that all persons may be joined as plaintiffs in whom any right exists jointly, *severally*, or in the alternative.

As we have seen (*h*), proceedings under Part III. of the Act cannot be taken without the sanction of the Local Government Board.

Who should  
be made de-  
fendants.

The proper persons to institute proceedings under "The Rivers Pollution Prevention Act, 1876," having been pointed out, it is, in the next place, requisite to indicate who should be made defendants. And, speaking generally, any sanitary authority or person committing any offence against the Act, is liable to be made a defendant (*i*). And, as we have seen (*k*), where the prohibition contained in Parts I., II., and III. of the Act were noticed, the person who *does* an act and the person who *causes* it, are alike offenders under the Act. Consequently, it may very well happen that *more* than one person may have to be *joined as defendants* (*l*).

Two months' notice necessary before taking proceedings.

*The Rivers Pollution Act, 1876, s. 13.*

The following section of the Act imposes certain restrictions on proceedings for offences, by requiring notice to be given of intention to take such proceedings:—

"Proceedings shall not be taken under this Act against any person for any offence against the provisions of Parts II. and III. of this Act until the expiration of twelve months after the passing of this Act; nor shall proceedings in any case be taken under this Act for any offence against this Act until the expiration of two months after written notice of the intention to take such proceedings has been given to the offender, nor shall proceedings under this Act be taken for

As regards the actual hearing of cases under the Act, it must be observed that, previous to making a summary order, "the Court may, if it think fit, remit to skilled parties to report on "the best practicable and available means,' and the nature and cost of the works and apparatus required, who shall, in all cases, take into consideration the reasonableness of the expense involved in their report" (o). It is presumed, however, that where the plaintiff is already in possession of a certificate, under section 12 of the Act (p), that the County Court would not be justified in having resort to this course. For, as already stated, it is expressly provided, by section 12, that such certificate "*shall in all Courts and in all proceedings under this Act be conclusive evidence of the fact*" of the best practicable means having been adopted.

The hearing.

"The Rivers Pollution Prevention Act, 1876," provides an appeal against orders made under it by a section as follows:—

Appeal lies against order under the Act.

"If either party in any proceedings before the County Court under this Act feels aggrieved by the decision of the Court in point of law or on the merits, or in respect of the admission or rejection of any evidence, he may appeal from that decision to the High Court of Justice.

The Rivers Pollution Act, 1876, s. 11.

"The appeal shall be in the form of a special case to be agreed upon by both parties or their attorneys, and, if they cannot agree, to be settled by the Judge of the County Court upon the application of the parties or their attorneys.

"The Court of Appeal may draw any inferences from the facts stated in the case that a jury might draw from facts stated by witnesses.

"Subject to the provisions of this section, all the enactments, rules, and orders relating to proceedings in actions in County Courts, and to enforcing judgments in County Courts and appeals from decisions of the County Court Judges, and to the conditions of such appeals, and to the power of the Superior Courts on such appeals, shall apply to all proceedings under this Act, and to an appeal from such action, in the same manner as if such action and appeal related to a matter within the ordinary jurisdiction of the Court.

"Any plaint entered in a County Court under this Act may be removed into the High Court of Justice by leave of any Judge of the said High Court, if it appears to such Judge desirable in the interests of justice that such case should be tried in the first instance in the High Court of Justice and not in a County Court, and on such terms as to security for and payment of costs, and such other terms (if any) as such Judge may think fit."—39 & 40 Vict. c. 75, s. 11.

It is provided by section 10 of the Act (q), that an order of

Enforcement of orders.

(o) See sect. 10, *ante*, pp. 1243—1244.

(p) See *ante*, p. 1240.

(q) See this section, *ante*, pp. 1243—1244.

a County Court imposing penalties on a defendant who is in default, “*shall be enforced in the same manner as any debt adjudged to be due by the Court.*” And that all the enactments, rules, and orders relating to the enforcing of judgments in County Courts shall apply to all proceedings under the Act (r).

(r) Sect. 11, *ante*, p. 1247.

## BOOK V.—DIVISION V.

### PROCEEDINGS UNDER STATUTES RELATING TO MATTERS OF PUBLIC CONCERN.

#### CHAPTER V.

##### JURISDICTION AND PROCEEDINGS UNDER "THE HABITUAL DRUNKARDS ACT, 1879."

"THE Habitual Drunkards Act, 1879," came into operation on the 1st January, 1880, and it is provided that it shall be in force until the expiration of ten years from the passing thereof, and to the end of the then next session of Parliament (*a*).

The object of "The Habitual Drunkards Act, 1879," is to facilitate the control and cure of habitual drunkards (*b*).

The Act in question contains the following definition of an "habitual drunkard" :—

" 'Habitual drunkard' means a person who, not being amenable to any jurisdiction in lunacy, is notwithstanding, by reason of habitual intemperate drinking of intoxicating liquor, at times dangerous to himself or herself or to others, or incapable of managing himself or herself, and his or her affairs." —42 & 43 Vict. c. 19, s. 3 (*c*).

"The Habitual Drunkards Act, 1879," provides for the establishment of retreats, which are thus defined :—

" 'A retreat' means a house licensed by the licensing authority named by this Act, for the reception, control, care, and curative treatment of habitual drunkards." —42 & 43 Vict. c. 19, s. 3 (*d*).

The section of the Act which authorises their establishment is in the following terms :—

"The local authority may, subject to any conditions which such local authority shall deem fit, grant to any person, or to two or more persons jointly, a license for any period not

Object of  
"The Habitual  
Drunkards  
Act, 1879."

Definition of  
"habitual  
drunkard."  
*The Habitual  
Drunkards  
Act, 1879,*  
s. 3.

Retreats to be  
established.

Definition of  
retreat.

Retreats to  
be licensed  
by local  
authority.

*The Habitual  
Drunkards  
Act, 1879,*  
s. 6.

(*a*) 42 & 43 Vict. c. 19, s. 2.

(*b*) See Preamble.

(*c*) It has not been thought necessary to set out the *whole* of this section.

(*d*) It has not been thought necessary to set out the *whole* of this section.

“exceeding thirteen months to keep a retreat ; and may, from time to time, revoke or renew such license. The application for such license shall be in the Form No. 1 in the Second Schedule hereto, or to the like effect. The license shall be in the Form No. 2 in the same Schedule, or to the like effect. One at least of the persons to whom a license is granted shall reside in the retreat and be responsible for its management. A duly qualified medical man shall be employed as medical attendant of such retreat, provided that when the name of the licensee shall be on the medical register he may himself act as such medical attendant.”—42 & 43 Vict. c. 19, s. 6.

Form of  
license.

Certain persons cannot  
be licensed to  
keep retreats.

*The Habitual  
Drunkards  
Act, 1879,*  
s. 7.

Transfer of  
licenses to  
keep retreats.

*The Habitual  
Drunkards  
Act, 1879,*  
s. 8.

The Form No. 1 referred to in the above section need not be set out. But Form 2 is given in the footnote (e).

“The Habitual Drunkards Act, 1879,” expressly provides, by the following section, that certain persons shall not be entitled to receive a license to keep a retreat :—

“No license shall be given to any person who is licensed to keep a house for the reception of lunatics.”—42 & 43 Vict. c. 19, s. 7.

A license under the Act may, in certain cases, be transferred by the local authority to another person. A transfer of this kind takes place by means of indorsement on the original license. On this subject, “The Habitual Drunkards Act, 1879,” provides as follows :—

“If the licensee of any retreat becomes incapable, from sickness or otherwise, of keeping such retreat, dies, or becomes bankrupt, or has his affairs liquidated by arrangement, or becomes mentally incapable or otherwise disabled, the local authority, by writing under their hands, indorsed on the license, may transfer the license to another person, if the local authority, in its discretion, shall think fit.”—42 & 43 Vict.

“retreat may make application in writing to the licensee of a  
 “retreat for admission into such retreat, and such application  
 “shall be in the Form No. 3 in the Second Schedule hereto,  
 “and shall state the time during which such applicant under-  
 “takes to remain in such retreat. Such application shall be  
 “accompanied by the statutory declaration of two persons to  
 “the effect that the applicant is an habitual drunkard within  
 “the meaning of this Act.

*The Habitual  
 Drunkards  
 Act, 1879,  
 s. 10.*

“The signature of the applicant to such application shall be  
 “attested by two justices of the peace, and such justices shall  
 “not attest the signature unless they have satisfied themselves  
 “that the applicant is an habitual drunkard within the mean-  
 “ing of this Act, and have explained to him the effect of his  
 “application for admission into a retreat and his reception  
 “therein, and such justices shall state in writing, and as a part  
 “of such attestation, that the applicant understood the effect  
 “of his application for admission and his reception into the  
 “retreat.

“Such applicant, after his admission and reception into such  
 “retreat, unless discharged or authorised by license as herein-  
 “after provided, shall not be entitled to leave such retreat till  
 “the expiration of the term mentioned in his application, and  
 “such applicant may be detained therein till the expiration of  
 “such term; provided that such term shall not exceed the  
 “period of twelve calendar months.”—42 & 43 Vict. c. 19,  
 s. 10.

The form referred to in the above section is given in the  
 footnote (f).

Form of ap-  
 plication for  
 admission to  
 retreat.

“The Habitual Drunkards Act, 1879,” provides for the in-  
 spection of licensed retreats and for the discharge of persons

(f) The Form referred to is as follows:—

“REQUEST FOR RECEPTION INTO RETREAT.

“‘*The Habitual Drunkards Act, 1879.*’

“To  
 “I, the undersigned, hereby request you to receive me as a patient in your  
 “retreat at in accordance with the above-mentioned Act, and I under-  
 “take to remain therein for at least, unless sooner duly discharged, and  
 “to conform to the regulations for the time being in force in the retreat.

“The above-named signed this application in our pre-  
 “sence, and at the time of his [*or, her*] so doing we  
 “satisfied ourselves that he [*or, she*] was an habitual  
 “drunkard within the meaning of ‘*The Habitual*  
 “*Drunkards Act, 1879,*’ and stated to him [*or, her*] the  
 “effect of this application, and of his [*or, her*] recep-  
 “tion into the retreat, and he [*or, she*] appeared per-  
 “fectly to understand the same.

“Dated this day of

Justices of the Peace for the county  
 “[*or, borough*] of

“*Witness’s*  
 “*Name in full.*  
 “*Address.*  
 “*Description.*

*Applicant’s*  
*Name in full.*  
*Address.*  
*Description.”*

Inspection  
of licensed  
retreats and  
discharge  
therefrom.

*The Habitual  
Drunkards  
Act, 1879,*  
s. 18.

Proceedings  
in the County  
Court under  
“*The Habitual  
Drunkards  
Act, 1879.*”

therein detained. It is quite unnecessary to refer to all the provisions on this subject. It is sufficient to set out the following section conferring jurisdiction on the County Court Judges in regard to the inspection of licensed retreats and the discharge therefrom of persons therein detained :—

“ A Judge of the High Court of Justice, on an application *ex parte* at Chambers, or a County Court Judge, within whose district the retreat is situated, may at any time, by order under his hand, authorise and direct any person or persons to visit and examine a person detained in a retreat under this Act, and to inquire into and report on any matters which such Judge may think fit in relation to the person so detained. The Judge, on receiving such report, may, if he shall think fit, order the discharge of any person so detained from any such retreat.”—42 & 43 Vict. c. 19, s. 18.

With regard to proceedings in the County Court under the above section, it is presumed that “The County Court Rules, 1875,” will apply so far as they can (*g*).

The application for an inspection is *ex parte*.

It is to be noticed that the above section provides that the application must be made to “*a County Court Judge, within whose district the retreat is situated.*”

(*g*) See Ord. xl., *ante*, p. 887.



## BOOK VI.

### THE JURISDICTION AND PRACTICE IN BANKRUPTCY.

#### CHAPTER I.

##### THE CONSTITUTION, JURISDICTION, AND OFFICERS OF THE COUNTY COURTS AS COURTS OF BANKRUPTCY.

THE Act of Parliament 32 & 33 Vict. c. 71, passed in the year 1869, and commonly known by its short title, as "The Bankruptcy Act, 1869," constitutes certain County Courts to be Local Courts of Bankruptcy. It at the same time repeals certain earlier enactments conferring bankruptcy jurisdiction on the County Courts (*a*).

"The Bankruptcy Act, 1869," constitutes certain County Courts Local Courts of Bankruptcy.

The previously existing District Courts of Bankruptcy are also abolished, and business which at the date of the Bankruptcy Act, 1869, was pending, such District Courts of Bankruptcy was by that Act transferred to the London Bankruptcy Court, or to such County Court or County Courts as the Lord Chancellor thinks fit to direct (*b*). It will be convenient to

(*a*) The statute 10 & 11 Vict. c. 102, which conferred a limited jurisdiction in insolvency and protection cases upon the County Courts, was repealed by "The Bankruptcy Act, 1861" (24 & 25 Vict. c. 134). This last-named Act was likewise itself repealed by "The Bankruptcy Repeal and Insolvent Act, 1869" (32 & 33 Vict. c. 83), the provisions of which and of the Rules made in pursuance thereof, relate exclusively to *pending* business under repealed statutes, and are not, therefore, noticed in this work, which deals, exclusively, with the modern practice in bankruptcy under "The Bankruptcy Act, 1869."

(*b*) This is provided by the following section of "The Bankruptcy Act, 1869":—

"From and after the commencement of this Act, the country District Courts of Bankruptcy shall be abolished, and the commissioners, registrars, official assignees, messengers, ushers, clerks, and officers of the said Courts respectively shall cease to hold their offices.

"Such part of the business pending in any country District Court of Bankruptcy as the Lord Chancellor thinks fit shall be disposed of by the registrar of that Court (who shall for that purpose continue to have and discharge all his powers and authorities, rights and duties), and the residue of that business shall be transferred to the London Bankruptcy Court, or to such County Court or County Courts as the Lord Chancellor, by order before or after its abolition, thinks fit to direct; but, subject as aforesaid, the office of any registrar in such country District Court shall be abolished.

"All books, papers, documents, and money in the custody or control of any such commissioners, registrars, official assignees, messengers, ushers, clerks,

Abolition of District Courts of Bankruptcy. Business pending therein to be transferred to County Courts.

*The Bankruptcy Act, 1869, s. 130.*

here set out the sections of the Act conferring its short title and defining the extent, and the period of commencement, of its operation. These sections are as follow :—

**Short title.**

*The Bankruptcy Act, 1869, s. 1.*

"This Act may be cited as "The Bankruptcy Act, 1869."—32 & 33 Vict. c. 71, s. 1.

**Application of Act.**

*The Bankruptcy Act 1869, s. 2.*

"This Act shall not, except in so far as is expressly provided, apply to Scotland or Ireland."—32 & 33 Vict. c. 71, s. 2.

**Commencement of Act.**

*The Bankruptcy Act, 1869, s. 3.*

"This Act shall not come into operation until the first day of January one thousand eight hundred and seventy, which date is hereinafter referred to as the commencement of this Act."—32 & 33 Vict. c. 71, s. 3.

"The Bankruptcy Act, 1869," establishes (1.)

The London Court of Bankruptcy, and (2.) Local Bankruptcy Courts.

It has just been mentioned that "The Bankruptcy Act, 1869," constitutes certain County Courts to be Local Courts of Bankruptcy. The Act establishes, however, two classes of Bankruptcy Courts, namely—(1.) *The London Bankruptcy Court*; and (2.) *The Local Bankruptcy Courts* (c). These Courts replace the *old* London Bankruptcy Court, which is reconstituted by the Act (d), and also the Country District Courts of Bankruptcy.

The following is the text of the sections of the Act by which such Courts are respectively constituted :—

The territorial limits of the jurisdiction of the London Bankruptcy Court and the Local Bankruptcy

"From and after the commencement of this Act, the following provisions shall take effect with respect to the Courts having jurisdiction in bankruptcy, and their officers; that is to say,

"If the person sought to be adjudged a bankrupt reside  
"or carry on business within the London Bankruptcy  
"District as hereinafter defined, or be not resident  
"in England, then 'the Court' shall mean, for the  
"purposes of this Act, the Court of Bankruptcy in

“ this Act, comprise the following places ; that is to say, the city of London and the liberties thereof, and all such parts of the metropolis and other places as are situated within the district of any County Court described as a metropolitan County Court in the list contained in the second schedule hereto ” (e).—32 & 33 Vict. c. 71, s. 60.

Definition of the London District.

*The Bankruptcy Act, 1869, s. 60.*

Although, however, the Act constitutes a London Court and various Local Courts, yet it provides that all the Courts shall nevertheless be deemed in law to be and form but one Court. For it directs :—

Different Courts constituted by the Act to be deemed all one Court.

“ The following regulations shall be made with respect to proceedings in bankruptcy, namely,

“ (6.) Subject to the provisions of this Act every Court having original jurisdiction in Bankruptcy shall be deemed to be the same Court and to have jurisdiction throughout England ; and cases may be transferred from one Court to another in such manner as may be prescribed : . . . . . ”  
—32 & 33 Vict. c. 71, s. 80 (f).

Moreover, in order to prevent any evasion of the bankrupt laws, and to facilitate their administration throughout the United Kingdom and British Empire, extensive *auxiliary* jurisdiction is conferred on the various Bankruptcy Courts, having jurisdiction in bankruptcy.

— And the several Courts to be auxiliary to each other.

“ The Bankruptcy Act, 1869,” provides as follows :—

*The Bankruptcy Act, 1869, s. 74.*

“ The London Bankruptcy Court, the local Bankruptcy Court, the Courts having jurisdiction in bankruptcy in Scotland and Ireland, and every British Court elsewhere having jurisdiction in bankruptcy or insolvency, and the officers of such Courts respectively, shall severally act in aid of and be auxiliary to each other in all matters of bankruptcy, and an order of the Court seeking aid, together with a request to another of the said Courts, shall be deemed sufficient to enable the latter Court to exercise, in regard to the matters directed by such order, the like jurisdiction which the Court which made the request, as well as the Court to which the request

(e) The following is the schedule alluded to in this section :—

#### “ SCHEDULE II.

##### “ LIST OF METROPOLITAN COUNTY COURTS.

- “ The Bloomsbury County Court of Middlesex.
- “ The Bow County Court of Middlesex.
- “ The Brompton County Court of Middlesex.
- “ The Clerkenwell County Court of Middlesex.
- “ The Lambeth County Court of Surrey.
- “ The Marylebone County Court of Middlesex.
- “ The Shoreditch County Court of Middlesex.
- “ The Southwark County Court of Surrey.
- “ The Westminster County Court of Middlesex.
- “ The Whitechapel County Court of Middlesex.”

(f) See this section set out in full, *post*, pp. 1258—1260.

“ is made, could exercise in regard to similar matters within “ their respective jurisdictions.”—32 & 33 Vict. c. 71, s. 74.

It has been held, under this section, that an English Bankruptcy Court has no jurisdiction to issue a debtor’s summons, or to take any proceedings whatever against a person who actually *de facto* at the moment is living in Ireland, at his own residence there, and has nothing whatever at the time which could, either *de facto* or by construction of law, be deemed to be his residence in this country (*g*).

Districts of  
local Courts  
of Bankruptcy.

The districts of local Courts of Bankruptcy are not co-extensive with the ordinary “ County Court Districts,” framed under “ The County Courts Act,” and referred to in an early page of this work (*h*). The Metropolitan County Courts possess (as we have seen) no bankruptcy jurisdiction whatever, and their districts are included in the jurisdiction of the London Courts (*i*). A large number of country County Court districts—in fact the majority of such districts—also possess no bankruptcy jurisdiction, but have been excluded from such jurisdiction and attached to some large Court, which has been invested with jurisdiction for a large area around it, and made the Local Court of bankruptcy for such district.

It is not necessary to set out here the Lord Chancellor’s Orders under which districts have been formed—since it is a mere matter of local inquiry to ascertain in what bankruptcy district any particular place is included. It is sufficient to say that such bankruptcy districts have been formed under the power created by the following enactments:—

The Bank-  
ruptcy Act,  
1869, s. 79.

“ Notwithstanding anything in this Act contained, the Lord  
“ Chancellor may from time to time, by order under his hand,  
“ exclude any County Court from having jurisdiction in bank-  
“ ruptcy, and for the purposes of bankruptcy jurisdiction may

The following sections of "The Bankruptcy Act" relate to the powers of local Courts of Bankruptcy :—

"Every Judge of a local Court of Bankruptcy shall, for the purposes of this Act, in addition to his ordinary powers as a County Court Judge, have all the powers and jurisdiction of a Judge of Her Majesty's High Court of Chancery, and the orders of such Judge may be enforced accordingly in manner prescribed" (l).—32 & 33 Vict. c. 71, s. 66.

—Court possesses all the powers of a Chancery Judge.

"Subject to the provisions of this Act, every Court having jurisdiction in bankruptcy under this Act, shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, arising in any case of bankruptcy coming within the cognizance of such Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case; and no such Court as aforesaid shall be subject to be restrained in the execution of its powers under this Act by the order of any other Court, nor shall any appeal lie from its decisions, except in manner directed by this Act; and if in any proceeding in bankruptcy there arises any question of fact which the parties desire to be tried before a jury instead of by the Court itself, or which the Court thinks ought to be tried by a jury, the Court may direct such trial to be had, and such trial may be had accordingly, in the London Court of Bankruptcy, in the same manner as if it were the trial of an issue in one of the Superior Courts of Common Law, and in the County Court in the manner in which jury trials in ordinary cases are by law held in such Courts" (m).—32 & 33 Vict. c. 71, s. 72.

And also certain general powers.

*The Bankruptcy Act, 1869, s. 72.*

The Court has power under this section, to restrain a creditor from bringing against the trustee under a liquidation, an action upon a bill of sale given by the debtor the validity of which is disputed by the trustee (n). It has also power to grant in a summary way an injunction to restrain a person, *not a party* to the bankruptcy proceedings, from dealing with property fraudulently assigned before the bankruptcy (o). And it is quite clear that a County Court, acting as a local Bankruptcy Court, may, under this section, restrain actions (p). Thus it has been held to have power to grant an injunction restraining an action for foreclosure brought by a mortgagee of the bankrupt, and then pending in the Chancery Division; and it makes no difference

Effect of the above enactments.

(l) See *Ex parte Anderson*, L. R. 5 Ch. App. 473, as to the effect of this section.

(m) Sect. 13, *post*, p. 1313, gives Bankruptcy Courts power to restrain actions, suits, executions, or other legal process.

(n) *Ex parte Cohen*, L. R. 7 Ch. App. 20.

(o) *Ex parte Anderson*, L. R. 5 Ch. App. 473.

(p) *Ex parte Macdonald*, 19 W. R. 717.

that such action has been commenced before the institution of the bankruptcy proceedings (*q*).

But no Court of Bankruptcy has jurisdiction to restrain actions involving questions which such Court is not itself competent to decree (*r*).

In what cases  
local Courts  
of Bankruptcy  
have juris-  
diction.

It will be seen from the above enactments, that, as far as their original jurisdiction is concerned, the London Bankruptcy Court and the local Bankruptcy Court are distinguished, the one from the other, by a *territorial* and not by a *pecuniary* limit. In short, *the residence or place of business* of the person sought to be adjudged a bankrupt, determines whether bankruptcy proceedings shall be instituted in the London Bankruptcy Court or in the local Bankruptcy Courts. And, except where the person proposed to be made a bankrupt, resides within the London Bankruptcy district, as above defined, the local bankruptcy Court (*i.e.* one or other of the County Courts) has jurisdiction.

In considering whether the London Court of Bankruptcy, or a particular local Court of Bankruptcy, has jurisdiction, the cases already cited, in another part of this Treatise (*s*), upon the question when a defendant may be said to "*dwell*" or "*carry on business*" within a particular County Court within sect. 1 of "The County Court Act, 1867," may usefully be consulted. It is to be noticed, however, that the words of sect. 59 of "The Bankruptcy Act, 1869," are not "*dwell or carry on business*," but "*reside or carry on business*."

Matters inci-  
dental to the  
constitution of  
the Courts.

The general constitution and jurisdiction of the County Courts as local Bankruptcy Courts having been now stated, it is necessary to refer, briefly, to various matters incidental to the existence of such local Courts.

(1.) Rules of

(1.) *First*, as to the rules regulating the practice of the

- “ ings, or any of them, upon such terms as the Court thinks fit : *The Bankruptcy Act, 1869, s. 80.*
- “(3.) Where proceedings against the debtor are instituted in more Courts than one, the London Court of Bankruptcy may, on the application of any creditor, direct the transfer of such proceedings to the London Court of Bankruptcy, or to any local Bankruptcy Court :
- “(4.) Where the petitioner does not proceed with due diligence on his petition the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of a petitioning creditor :
- “(5.) Where the creditors resolve by a special resolution that it will be more convenient that the proceedings in any local Bankruptcy Court should be transferred to the London Court or to some other local Court, or where the Judge of a local Court certifies that in his opinion the bankruptcy would be more advantageously conducted in the London Court or in some other local Court, and the creditors do not by resolution object to the transfer, the petition shall be transferred to and all subsequent proceedings thereon had in the London Court or such other local Court :
- “(6.) Subject to the provisions of this Act, every Court having original jurisdiction in bankruptcy shall be deemed to be the same Court, and to have jurisdiction throughout England ; and cases may be transferred from one Court to another in such manner as may be prescribed :
- “(7.) A corporation may prove a debt, vote, and otherwise act in bankruptcy, by an agent duly authorised under the seal of the corporation :
- “(8.) A creditor may, in the prescribed manner, by instrument in writing, appoint a person to represent him in all matters relating to any debtor or his affairs in which a creditor is concerned in pursuance of this Act, and such representative shall thereupon, for all the purposes of this Act, stand in the same position as the creditor who appointed him :
- “(9.) When a debtor who has been adjudicated a bankrupt dies, the Court may order that the proceedings in the matter be continued as if he were alive :
- “(10.) The Court may, at any time, on proof to its satis-

“faction that proceedings in bankruptcy ought  
 “to be stayed, by reason that negotiations are  
 “pending for the liquidation of the affairs of the  
 “bankrupt by arrangement or for the accept-  
 “ance of a composition by the creditors in pur-  
 “suance of the provisions hereinafter con-  
 “tained (*l*), or on proof to its satisfaction of any  
 “other sufficient reason for the staying the  
 “same, make an order staying the same, either  
 “altogether or for a limited time, on such terms  
 “and subject to such conditions as the Court  
 “may think just.”—32 & 33 Vict. c. 71, s. 80.

The Act also gives a power to Lord Chancellor, with advice of Chief Judge, to make general rules. *The Bankruptcy Act, 1869, s. 78.*

“The Bankruptcy Act, 1869,” also creates a power to frame general rules of practice. It enacts :—

“The Lord Chancellor, with the advice of the Chief Judge  
 “in Bankruptcy, may from time to time make, and may from  
 “time to time revoke and alter, general rules, in this Act de-  
 “scribed as rules of Court, for the effectual execution of this  
 “Act, and of the objects thereof, and the regulation of the  
 “practice and procedure of bankruptcy petitions and the pro-  
 “ceedings thereon.

“Any general rules made as aforesaid may prescribe regula-  
 “tions as to the service of bankruptcy petitions, including  
 “provisions for substituted service; as to the valuing of any  
 “debts provable in a bankruptcy; as to the valuation of secu-  
 “rities held by creditors; as to the giving or withholding  
 “interest or discount on or in respect of debts or dividends;  
 “as to the funds out of which costs are to be paid, the order of  
 “payment, and the amount and taxation thereof; and as to  
 “any other matter or thing, whether similar or not to those  
 “above enumerated, in respect to which it may be expedient



"bankruptcy cases under this Act" (*tt*).—32 & 33 Vict. c. 71, s. 78.

In pursuance of this enactment, a body of rules and forms, and a scale of costs were drawn up in the year 1870, and another body of rules and forms, and a scale of costs in 1871. Moreover, in 1873 two new rules were made, and in 1878 six more were framed.

"The Bankruptcy Rules, 1871," provide, with a view to facilitate their citation, that :—

"The general rules in bankruptcy made on the 1st day of January, 1870, may be cited for all purposes as 'The Bankruptcy Rules, 1870,' and these rules as 'The Bankruptcy Rules, 1871,' and such rules shall be read and construed together."—"The Bankruptcy Rules, 1871," r. 1.

With regard to the application of the above rules, it is directed :—

"The foregoing rules shall apply, in exclusion of all other rules and orders heretofore made, to all proceedings commenced under the Act; but the principles, practice, and rules on which Courts having jurisdiction in bankruptcy have heretofore acted in dealing with proceedings in bankruptcy or otherwise shall be observed by any Court with respect to the further prosecution of any proceedings pending in any of such Courts on the 31st day of December, 1869, except that the power of delegation of powers by the Judges of such Courts authorised by section 67 of the Act and by these rules, may be exercised by such Judges as fully with respect to such pending proceedings as it may be exercised with respect to proceedings commenced under the Act."—"The Bankruptcy Rules, 1870," r. 319.

(2.) *Secondly*, both "The Bankruptcy Act, 1869," and "The Bankruptcy Rules" made under its authority, contain interpretation clauses. And these interpretation clauses may conveniently be set out in this place.

The interpretation clause of "The Bankruptcy Act, 1869," is as follows :—

"In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them; that is to say,

"The Court' shall mean the Court having jurisdiction in bankruptcy as by this Act provided :

"The registrar' shall mean the registrar of the 'Court' as above defined :

(*tt*) Where the construction of the Bankruptcy Act, 1869, is ambiguous or doubtful on any point, recourse may be had to the Rules which have been made by the Lord Chancellor under the authority of the Act, and if it is proved that in the Rules any particular construction has been put on the Act, it is the duty of the Court to adopt and follow that construction. *Per Mellish, L.J.*, in *Ex parte Wier*; *In re Wier*, 41 L. J. Bank. (N. S.) 14. No question as to the validity of the Rules made under sect. 78 of "The Bankruptcy Act, 1869," can be entertained; *Re Davies*, 21 L. T. N. S. 685.

"The Bankruptcy Rules, 1870," and "The Bankruptcy Rules, 1871," made under powers conferred.

Short title of rules.

—Rules to be read together.

*The Bankruptcy Rules, 1871, r. 1.*

Application of the above rules.

*The Bankruptcy Rules, 1870, r. 319.*

(2.) Interpretation of the Act and the Rules.

—Interpretation of "The Bankruptcy Act, 1869."

*The Bankruptcy Act, 1869, s. 4.*

“ ‘Prescribed’ shall mean prescribed by rules of Court to  
“ be made as in this Act provided :

“ ‘Property’ shall mean and include money, goods, things  
“ in action, land, and every description of property,  
“ whether real or personal ; also, obligations, ease-  
“ ments, and every description of estate, interest,  
“ and profit, present or future, vested or contin-  
“ gent, arising out of or incident to property as above  
“ defined :

“ ‘Debt provable in bankruptcy’ shall include any debt  
“ or liability by this Act made provable in bank-  
“ ruptcy :

“ ‘Person’ shall include a body corporate :

“ ‘Trader’ shall, for the purposes of this Act, mean the  
“ several persons in that behalf mentioned in the  
“ first schedule to this Act annexed.”—32 & 33 Vict.  
c. 71, s. 4.

Interpretation  
of “The  
Bankruptcy  
Rules.”

*The Bank-  
ruptcy Rules,*  
1870, r. 1.

The following interpretation clause is contained in “The  
Bankruptcy Rules :”—

“ In the construction of these rules and forms, words im-  
“ porting the singular number shall include the plural, and  
“ words importing the plural number shall include the singular  
“ number, and words importing the masculine gender shall  
“ include females, and the following terms shall (if not incon-  
“ sistent with the context or subject matter) have the respective  
“ meanings hereinafter assigned to them, that is to say :

“ ‘The Act’ shall mean the Bankruptcy Act, 1869 :

“ ‘Court’ shall mean the Court having jurisdiction in the  
“ matter :

“ ‘Judge’ shall mean the Judge or a lawfully appointed  
“ deputy judge of any such Court :

“ ‘Local paper’ shall mean a paper circulating in the  
“ locality of the Court :

“ ‘Sealed’ shall mean sealed with the seal of the Court :

“ And, unless there be something in the context inconsistent  
“ therewith, the provisions of sections 4 and 114 of the Act shall  
“ apply to these rules.”—“The Bankruptcy Rules, 1870.” r. 1.

(3.) *Thirdly*, as to the days on which the offices of the Court  
are to be open. (3.) Days on  
which offices  
are to be  
open.

In another part of the work (*u*) it has been indicated on  
what days the offices connected with County Courts are to be  
open.

With regard to the constitution of certain County Courts, as  
Local Bankruptcy Courts, “The Bankruptcy Act, 1869,” it  
will be seen (*x*), in providing for the appointment of an officer  
called “The Comptroller in Bankruptcy,” enacts that “*The  
“ comptroller shall be provided with such office in London as  
“ may be directed by the Lord Chancellor, with the approval of  
“ the Treasury.*”

—Offices  
generally.  
—Office of  
Comptroller  
in London.

When this official’s office is to be open, nowhere appears. But  
“The Bankruptcy Rules, 1870,” provide that “*the Registers  
“ shall be open for searches by the public at all hours that the  
“ office of the comptroller is open*” (*y*).

(4.) *Fourthly*, as to the forms to be used “The Bankruptcy  
Rules, 1870,” provide as follows :— (4.) Forms.

“In matters under the Act the proceedings may be in the  
“ several forms set forth in the schedule attached to these rules,  
“ or as near thereto as possible, and where forms for any pro-  
“ ceeding in such matters are not provided in the schedule, the  
“ forms required may be framed by the parties, using as guides  
“ those so provided, so far as they are applicable.”—“The  
Bankruptcy Rules, 1870,” r. 7.

Forms in  
schedule to  
be followed,  
and, where  
none provided,  
parties may  
frame them.

“All proceedings in the Court (except notices to creditors)  
“ shall be written or printed, or partly written or partly printed,  
“ on parchment or paper of the size hitherto used in bank-  
“ ruptcy, that is to say, on sheets of sixteen inches in length  
“ and ten inches in breadth, or thereabouts ; but no objection  
“ shall be allowed to any proof of debt, affidavit, or proxy on  
“ account of its being written or printed on other sized paper.”  
—“The Bankruptcy Rules, 1870,” r. 8.

*The Bank-  
ruptcy Rules,  
1870, r. 7.*

How docu-  
ments are to  
be prepared.

*The Bank-  
ruptcy Rules,  
1870, r. 8.*

(5.) *Fifthly*, with regard to fees, “The Bankruptcy Act,  
1869,” provides as follows :— (5.) Fees.

“The Lord Chancellor shall, with the sanction of the  
“ Treasury, from time to time prescribe a scale of fees to be  
“ charged for any business done by any Court or officer thereof  
“ under this Act ; and the Treasury shall direct whether the

Scale of fees  
to be pre-  
scribed by  
the Lord  
Chancellor,  
with sanction  
of Treasury.

(*u*) Book I. cap. i. pp. 40—41.

(*x*) Sect. 55, *post*, p. 1385.

(*y*) Rule 239, *post*, p. 1275.

*The Bankruptcy Act, 1869, s. 68.*

“ same shall be imposed by stamps or otherwise, and by whom  
“ and in what manner the same shall be collected, accounted  
“ for, and appropriated, and whether any and what remunera-  
“ tion shall be allowed to any person performing any duties  
“ under this Act.”—32 & 33 Vict. c. 71, s. 68.

In pursuance of this enactment a scale of fees was, by Order dated the 10th August, 1871, prescribed by the Lord Chancellor, with the sanction of the Treasury (z).

(6.) Compu-  
tation of  
time.

Mode of com-  
puting time  
appointed by  
statute for  
doing certain  
acts.

*The Bankruptcy Act, 1869, s. 114.*

(6.) *Sixthly.* With regard to the computation of time within which anything is, by the Act, limited to be done, “The Bankruptcy Act, 1869,” provides as follows :—

“ Where by this Act any limited time from or after any date  
“ or event is appointed or allowed for the doing of any act or  
“ the taking of any proceeding, then in the computation of  
“ such limited time the same shall be taken as exclusive of the  
“ day of such date or of the happening of such event, and as  
“ commencing at the beginning of the next following day ;  
“ and the act or proceeding shall be done or taken at latest on  
“ the last day of such limited time according to such computa-  
“ tion, unless such last day is a Sunday, Christmas Day, Good  
“ Friday, or Monday or Tuesday in Easter Week, or a day  
“ appointed for public fast, humiliation, or thanksgiving, or a  
“ day on which, in pursuance of a notification by the Lord  
“ Chancellor under this Act, the Court does not sit, in which  
“ case any act or proceeding shall be considered as done or  
“ taken in due time if it is done or taken on the next day after-  
“ wards, not being one of the days in this section specified.

“ Where by this Act any act or proceeding is directed to be  
“ done or taken on a certain day, then if that day happens to  
“ be one of the days in this section specified, such act or pro-  
“ ceeding shall be considered as done or taken in due time if it

"The Bankruptcy Act, 1869," provides as follows :

"Every Court having jurisdiction in bankruptcy under this Act shall have a seal describing such Court in such manner as may be directed by order of the Lord Chancellor, and judicial notice shall be taken of such seal, and of the signature of the Judge or registrar of any such Court, in all legal proceedings."—32 & 33 Vict. c. 71, s. 109.

By order dated 1st January, 1870, "every County Court shall have a seal describing such Court, as it is now described by the seal hitherto used in every such Court respectively."

"The Bankruptcy Rules, 1870," provide as follows with regard to the sealing of process :—

"All summonses, petitions, notices, orders, warrants, and other process issued by the Court shall be sealed."—"The Bankruptcy Rules, 1870," r. 10.

Proceedings in bankruptcy, *when sealed with the seal of the Court, or if signed by the Judge, are receivable in evidence in all legal proceedings whatever (b).*

(9.) *Ninthly*, as to the transmission of notices, &c., by post, it is by "The Bankruptcy Rules, 1870," provided as follows :—

"All notices and other proceedings, for the delivery of which no special mode is prescribed, may be sent by prepaid post letter to the last known address of the person, to be served therewith."—"The Bankruptcy Rules, 1870," r. 14.

(10.) *Tenthly*. The sittings of the Court require to be considered (a.) with regard to the *time* of such sittings, and (b.) with regard to the *place* of such sittings.

(a.) With regard to the *times* of the sittings, "The Bankruptcy Rules, 1870," provide as follows :—

"The times of the sitting of each County Court in matters of bankruptcy shall be those appointed for the transaction of the general business of the Court, unless the Judge of any such Court shall otherwise order, and shall appoint a special day or days for a sitting of the Court in matters of bankruptcy (c)."—"The Bankruptcy Rules, 1870," r. 205.

(b.) With regard to the *place* of the sittings, such sittings may be in Court or at chambers. The sittings in Court are governed by the following rule of "The Bankruptcy Rules, 1870" :—

"The place of sitting of each County Court in matters of bankruptcy shall be the town in which the Court now holds or may hereafter hold its sittings for the common law business of the Court, under the provisions of 'The County Courts Act, 1846' " (d).—"The Bankruptcy Rules, 1870," r. 204.

(b) 32 & 33 Vict. c. 71, s. 107, *post*, p. 1325.

(c) See *ante*, Book I. cap. i. p. 35—37, as to the time of the sittings of the County Courts for transaction of general business of the Court.

(d) See *ante*, Book I. cap. i. p. 37—39, as to sittings of the County Court for common law business of the Court."

Every Court with bankruptcy jurisdiction to have a seal.

*The Bankruptcy Act, 1869, s. 109.*

To be affixed to process.

All process to be sealed.

(9.) Transmission of notices, &c., by post.

Where no special mode of delivery prescribed, all notices, &c., may be sent by post.

*The Bankruptcy Rules, 1870, r. 14.*

(10.) Sittings of the Court.

(a.) Times of the sittings of the County Courts in bankruptcy.

*The Bankruptcy Rules, 1870, r. 205.*

(b.) Place of sitting may be in Court or at chambers.

Sittings in Court.

*The Bankruptcy Rules, 1870, r. 204.*

“is made, could exercise in regard to similar matters within “their respective jurisdictions.”—32 & 33 Vict. c. 71, s. 74.

It has been held, under this section, that an English Bankruptcy Court has no jurisdiction to issue a debtor's summons, or to take any proceedings whatever against a person who actually *de facto* at the moment is living in Ireland, at his own residence there, and has nothing whatever at the time which could, either *de facto* or by construction of law, be deemed to be his residence in this country (*g*).

Districts of  
local Courts  
of Bankruptcy.

The districts of local Courts of Bankruptcy are not co-extensive with the ordinary “County Court Districts,” framed under “The County Courts Act,” and referred to in an early page of this work (*h*). The Metropolitan County Courts possess (as we have seen) no bankruptcy jurisdiction whatever, and their districts are included in the jurisdiction of the London Courts (*i*). A large number of country County Court districts—in fact the majority of such districts—also possess no bankruptcy jurisdiction, but have been excluded from such jurisdiction and attached to some large Court, which has been invested with jurisdiction for a large area around it, and made the Local Court of bankruptcy for such district.

It is not necessary to set out here the Lord Chancellor's Orders under which districts have been formed—since it is a mere matter of local inquiry to ascertain in what bankruptcy district any particular place is included. It is sufficient to say that such bankruptcy districts have been formed under the power created by the following enactments:—

*The Bank-  
ruptcy Act,  
1869, s. 79.*

“Notwithstanding anything in this Act contained, the Lord  
“Chancellor may from time to time, by order under his hand,  
“exclude any County Court from having jurisdiction in bank-  
“ruptcy and for the purposes of bankruptcy jurisdiction may

The following sections of "The Bankruptcy Act" relate to the powers of local Courts of Bankruptcy:—

"Every Judge of a local Court of Bankruptcy shall, for the purposes of this Act, in addition to his ordinary powers as a County Court Judge, have all the powers and jurisdiction of a Judge of Her Majesty's High Court of Chancery, and the orders of such Judge may be enforced accordingly in manner prescribed" (l).—32 & 33 Vict. c. 71, s. 66.

—Court possesses all the powers of a Chancery Judge.

"Subject to the provisions of this Act, every Court having jurisdiction in bankruptcy under this Act, shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, arising in any case of bankruptcy coming within the cognizance of such Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case; and no such Court as aforesaid shall be subject to be restrained in the execution of its powers under this Act by the order of any other Court, nor shall any appeal lie from its decisions, except in manner directed by this Act; and if in any proceeding in bankruptcy there arises any question of fact which the parties desire to be tried before a jury instead of by the Court itself, or which the Court thinks ought to be tried by a jury, the Court may direct such trial to be had, and such trial may be had accordingly, in the London Court of Bankruptcy, in the same manner as if it were the trial of an issue in one of the Superior Courts of Common Law, and in the County Court in the manner in which jury trials in ordinary cases are by law held in such Courts" (m).—32 & 33 Vict. c. 71, s. 72.

And also certain general powers.

*The Bankruptcy Act, 1869, s. 72.*

The Court has power under this section, to restrain a creditor from bringing against the trustee under a liquidation, an action upon a bill of sale given by the debtor the validity of which is disputed by the trustee (n). It has also power to grant in a summary way an injunction to restrain a person, *not a party* to the bankruptcy proceedings, from dealing with property fraudulently assigned before the bankruptcy (o). And it is quite clear that a County Court, acting as a local Bankruptcy Court, may, under this section, restrain actions (p). Thus it has been held to have power to grant an injunction restraining an action for foreclosure brought by a mortgagee of the bankrupt, and then pending in the Chancery Division; and it makes no difference

Effect of the above enactments.

(l) See *Ex parte Anderson*, L. R. 5 Ch. App. 473, as to the effect of this section.

(m) Sect. 13, *post*, p. 1313, gives Bankruptcy Courts power to restrain actions, suits, executions, or other legal process.

(n) *Ex parte Cohen*, L. R. 7 Ch. App. 20.

(o) *Ex parte Anderson*, L. R. 5 Ch. App. 473.

(p) *Ex parte Macdonald*, 19 W. R. 717.

that such action has been commenced before the institution of the bankruptcy proceedings (*q*).

But no Court of Bankruptcy has jurisdiction to restrain actions involving questions which such Court is not itself competent to decree (*r*).

In what cases  
local Courts  
of Bankruptcy  
have juris-  
diction.

It will be seen from the above enactments, that, as far as their original jurisdiction is concerned, the London Bankruptcy Court and the local Bankruptcy Court are distinguished, the one from the other, by a *territorial* and not by a *pecuniary* limit. In short, *the residence or place of business* of the person sought to be adjudged a bankrupt, determines whether bankruptcy proceedings shall be instituted in the London Bankruptcy Court or in the local Bankruptcy Courts. And, except where the person proposed to be made a bankrupt, resides within the London Bankruptcy district, as above defined, the local bankruptcy Court (*i.e.* one or other of the County Courts) has jurisdiction.

In considering whether the *London* Court of Bankruptcy, or a particular local Court of Bankruptcy, has jurisdiction, the cases already cited, in another part of this Treatise (*s*), upon the question when a defendant may be said to "*dwell*" or "*carry on business*" within a particular County Court within sect. 1 of "*The County Court Act, 1867,*" may usefully be consulted. It is to be noticed, however, that the words of sect. 59 of "*The Bankruptcy Act, 1869,*" are not "*dwell or carry on business,*" but "*reside or carry on business.*"

Matters inci-  
dental to the  
constitution of  
the Courts.

The general constitution and jurisdiction of the County Courts as local Bankruptcy Courts having been now stated, it is necessary to refer, briefly, to various matters incidental to the existence of such local Courts.

(1.) Rules of (1.) *First*, as to the rules regulating the practice of the



- “ ings, or any of them, upon such terms as the Court thinks fit : *The Bankruptcy Act, 1869, s. 80.*
- “(3.) Where proceedings against the debtor are instituted in more Courts than one, the London Court of Bankruptcy may, on the application of any creditor, direct the transfer of such proceedings to the London Court of Bankruptcy, or to any local Bankruptcy Court :
- “(4.) Where the petitioner does not proceed with due diligence on his petition the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of a petitioning creditor :
- “(5.) Where the creditors resolve by a special resolution that it will be more convenient that the proceedings in any local Bankruptcy Court should be transferred to the London Court or to some other local Court, or where the Judge of a local Court certifies that in his opinion the bankruptcy would be more advantageously conducted in the London Court or in some other local Court, and the creditors do not by resolution object to the transfer, the petition shall be transferred to and all subsequent proceedings thereon had in the London Court or such other local Court :
- “(6.) Subject to the provisions of this Act, every Court having original jurisdiction in bankruptcy shall be deemed to be the same Court, and to have jurisdiction throughout England ; and cases may be transferred from one Court to another in such manner as may be prescribed :
- “(7.) A corporation may prove a debt, vote, and otherwise act in bankruptcy, by an agent duly authorised under the seal of the corporation :
- “(8.) A creditor may, in the prescribed manner, by instrument in writing, appoint a person to represent him in all matters relating to any debtor or his affairs in which a creditor is concerned in pursuance of this Act, and such representative shall thereupon, for all the purposes of this Act, stand in the same position as the creditor who appointed him :
- “(9.) When a debtor who has been adjudicated a bankrupt dies, the Court may order that the proceedings in the matter be continued as if he were alive :
- “(10.) The Court may, at any time, on proof to its satis-

“faction that proceedings in bankruptcy ought  
 “to be stayed, by reason that negotiations are  
 “pending for the liquidation of the affairs of the  
 “bankrupt by arrangement or for the accept-  
 “ance of a composition by the creditors in pur-  
 “suance of the provisions hereinafter con-  
 “tained (*1*), or on proof to its satisfaction of any  
 “other sufficient reason for the staying the  
 “same, make an order staying the same, either  
 “altogether or for a limited time, on such terms  
 “and subject to such conditions as the Court  
 “may think just.”—32 & 33 Vict. c. 71, s. 80.

The Act also  
 gives a power  
 to Lord Chan-  
 cellor, with  
 advice of  
 Chief Judge,  
 to make  
 general rules.  
*The Bank-  
 ruptcy Act,*  
*1869, s. 78.*

“The Bankruptcy Act, 1869,” also creates a power to frame general rules of practice. It enacts :—

“The Lord Chancellor, with the advice of the Chief Judge  
 “in Bankruptcy, may from time to time make, and may from  
 “time to time revoke and alter, general rules, in this Act de-  
 “scribed as rules of Court, for the effectual execution of this  
 “Act, and of the objects thereof, and the regulation of the  
 “practice and procedure of bankruptcy petitions and the pro-  
 “ceedings thereon.

“Any general rules made as aforesaid may prescribe regula-  
 “tions as to the service of bankruptcy petitions, including  
 “provisions for substituted service ; as to the valuing of any  
 “debts provable in a bankruptcy ; as to the valuation of secu-  
 “rities held by creditors ; as to the giving or withholding  
 “interest or discount on or in respect of debts or dividends ;  
 “as to the funds out of which costs are to be paid, the order of  
 “payment, and the amount and taxation thereof ; and as to  
 “any other matter or thing, whether similar or not to those  
 “above enumerated, in respect to which it may be expedient

"bankruptcy cases under this Act" (*tt*).—32 & 33 Vict. c. 71, s. 78.

In pursuance of this enactment, a body of rules and forms, and a scale of costs were drawn up in the year 1870, and another body of rules and forms, and a scale of costs in 1871. Moreover, in 1873 two new rules were made, and in 1878 six more were framed.

"The Bankruptcy Rules, 1871," provide, with a view to facilitate their citation, that :—

"The general rules in bankruptcy made on the 1st day of January, 1870, may be cited for all purposes as 'The Bankruptcy Rules, 1870,' and these rules as 'The Bankruptcy Rules, 1871,' and such rules shall be read and construed together."—"The Bankruptcy Rules, 1871," r. 1.

With regard to the application of the above rules, it is directed :—

"The foregoing rules shall apply, in exclusion of all other rules and orders heretofore made, to all proceedings commenced under the Act; but the principles, practice, and rules on which Courts having jurisdiction in bankruptcy have heretofore acted in dealing with proceedings in bankruptcy or otherwise shall be observed by any Court with respect to the further prosecution of any proceedings pending in any of such Courts on the 31st day of December, 1869, except that the power of delegation of powers by the Judges of such Courts authorised by section 67 of the Act and by these rules, may be exercised by such Judges as fully with respect to such pending proceedings as it may be exercised with respect to proceedings commenced under the Act."—"The Bankruptcy Rules, 1870," r. 319.

(2.) *Secondly*, both "The Bankruptcy Act, 1869," and "The Bankruptcy Rules" made under its authority, contain interpretation clauses. And these interpretation clauses may conveniently be set out in this place.

The interpretation clause of "The Bankruptcy Act, 1869," is as follows :—

"In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them; that is to say,

"'The Court' shall mean the Court having jurisdiction in bankruptcy as by this Act provided :

"'The registrar' shall mean the registrar of the 'Court' as above defined :

(*tt*) Where the construction of the Bankruptcy Act, 1869, is ambiguous or doubtful on any point, recourse may be had to the Rules which have been made by the Lord Chancellor under the authority of the Act, and if it is proved that in the Rules any particular construction has been put on the Act, it is the duty of the Court to adopt and follow that construction. *Per Mellish, L.J.*, in *Ex parte Wier*; *In re Wier*, 41 L. J. Bank. (N. S.) 14. No question as to the validity of the Rules made under sect. 78 of "The Bankruptcy Act, 1869," can be entertained; *Re Davies*, 21 L. T. N. S. 685.

"The Bankruptcy Rules, 1870," and "The Bankruptcy Rules, 1871," made under powers conferred.

Short title of rules.

—Rules to be read together.

*The Bankruptcy Rules, 1871, r. 1.*

Application of the above rules.

*The Bankruptcy Rules, 1870, r. 319.*

(2.) Interpretation of the Act and the Rules.

—Interpretation of "The Bankruptcy Act, 1869."

*The Bankruptcy Act, 1869, s. 4.*

“lowed such superannuation as they would have been entitled to receive if this Act had not been passed, and they had continued in their offices under the existing Acts ; and any other registrar, officer, or person appointed to any office under this Act may be allowed superannuation in pursuance of the provisions of ‘The Superannuation Act of 1859.’”—32 & 33 Vict. c. 71, s. 136.

Disqualifi-  
cation for  
Parliament.  
*The Bank-  
ruptcy Act,*  
1869, s. 69.

As we have seen already in an early page of this work, all County Court Judges are disqualified from sitting in Parliament. No such disqualification is, however, attached to the registrars or the other officers of an *ordinary* County Court. But registrars and officers of County Courts exercising jurisdiction in bankruptcy are disqualified from sitting in Parliament by the following enactment :—

“No Judge, registrar, or officer having jurisdiction in bankruptcy, or attached to any Court having jurisdiction in bankruptcy, shall, during his continuance in office, be capable of being elected or sitting as a member of the House of Commons ; and no registrar or officer of such Court shall, during his continuance in office, either directly or indirectly, by himself or partner, act as an attorney or solicitor in any proceeding in any bankruptcy in any Court of which he is registrar or officer, or in any appeal from such Court, or in any prosecution of a bankrupt by order of such Court, under pain of dismissal by the Judge ; and such dismissal shall be in writing, stating the reasons for the same ; and a copy thereof shall be sent to the Chief Judge in Bankruptcy, who, if he shall see fit, may reinstate such registrar or officer.”—32 & 33 Vict. c. 71, s. 69.

(3.) High  
bailiffs.

For a detailed account of the office of high bailiff we must refer to another part of this work (*p*). With reference to the

set out (*qq*), requiring every officer in bankruptcy matters to make a return to the Comptroller in Bankruptcy.

The high bailiff of a Bankruptcy Court is, like the registrar, disqualified from sitting in Parliament (*r*).

A trustee in bankruptcy is not a *permanent* officer of the Court, and as his appointment does not take place until *after* adjudication, it has been thought best to defer, till a later chapter, the consideration of all that relates to this official (*rr*).

The Comptroller in Bankruptcy is an officer whose appointment and duties call for some explanations and remarks.

The office of comptroller in bankruptcy is created by "The Bankruptcy Act, 1869" (32 & 33 Vict. c. 71), which enacts (*s*) that "the first and any subsequent comptroller shall be appointed by the Lord Chancellor, and hold office during his pleasure, and shall be paid such salary as the Lord Chancellor may, with the sanction of the Treasury, direct."

The comptroller in bankruptcy is disqualified from sitting in Parliament (*t*).

"The Bankruptcy Act, 1869," provides (*u*) that "The comptroller shall be provided with such office in London, and with such officers, clerks, and servants, as may be directed by the Lord Chancellor, with the approval of the Treasury. The officers, clerks, and servants in the office of the comptroller shall be appointed and dismissible by the comptroller, and there shall be allowed and paid to him such sum as the Treasury may from time to time direct for the expenses of his office, and of such clerks and other persons as may be deemed necessary by the Treasury" (*x*).

It will be more convenient to notice in detail, in a subsequent chapter, the duties of the comptroller in bankruptcy. But we may state generally, in this place, that his principal duty is to see that the trustee in bankruptcy discharges well the duties of his office. "The Bankruptcy Act, 1869," obliges every trustee in bankruptcy, not less than once a year during the bankruptcy, to transmit to the comptroller a statement showing the proceedings in such bankruptcy up to the date of the statement (*y*). And the same statute requires the comptroller to examine the statements transmitted to him, and, if necessary, to call the trustee to account for any misfeasance, neglect, or omission, which may appear on such statements, and to make good any loss the estate of the bankrupt may thereby have sustained (*z*). Moreover, the comptroller may at any time

must make returns to Comptroller.

High bailiff disqualified for Parliament.

(4.) Trustees in Bankruptcy.

(5.) The Comptroller in Bankruptcy.

Appointment and remuneration.

Disqualification.

The office, clerks, and servants of Comptroller.

Duties and powers of Comptroller.

(*qq*) Sect. 115, *ante*, p. 1271.

(*r*) Sect. 69, *supra*, p. 1272.

(*rr*) See *post*, chapter xii. p. 1359 *et seq.*

(*s*) Sect. 55.

(*t*) Sect. 69 of "Bankruptcy Act, 1869," see *ante*, p. 1272.

(*u*) *Ib.*

(*x*) 32 & 33 Vict. c. 71, s. 55, *post*, p. 1385.

(*y*) Sect. 56.

(*z*) Sect. 57.

require any trustee to answer any inquiry made by him in relation to any bankruptcy in which such trustee is engaged, and may, if he think fit, apply to the Court to examine on oath such trustee or any other person concerning such bankruptcy ; he may also direct a local investigation to be made of the books and vouchers of the trustee (*a*).

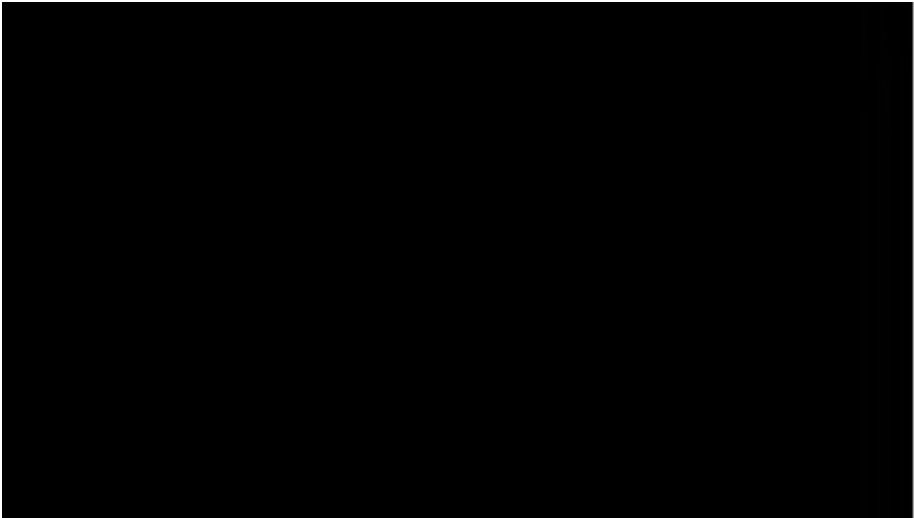
With reference to the general control exercised on trustees by the comptroller, "The Bankruptcy Rules, 1870," provide as follows :—

*The Comptroller to take cognizance of conduct of trustees.*

*The Bankruptcy Rules, 1870, r. 251.*

"The comptroller shall take cognizance of the conduct of trustees, and in the event of any trustee not faithfully performing his duties, and duly observing all the requirements imposed on him by statute, rules, or otherwise, relative to the performance of his duties, or in the event of any complaint being made to the comptroller by any creditor in regard thereto, he shall inquire into the same, and, if not satisfied with the explanation given, he shall report thereon to the Court, which after hearing the trustee may remove him from his office, or otherwise make such order in the matter as the justice of the case may require."—"The Bankruptcy Rules, 1870," r. 251.

In addition to the duties already specified, it has been seen (*b*) that the comptroller receives from the registrars and other officers returns of business from their respective Courts, and from such returns the comptroller "shall in manner prescribed by the rules of Court, frame books (which shall be, under the regulations of the Rules of Court, open for public information and searches), and also a general annual report to the Lord Chancellor, judicial and financial, respecting all matters within this Act, which report shall be laid before both Houses of Parliament."



"The registers shall be open for searches by the public at all hours that the office of the comptroller is open, upon a request in writing with a search stamp affixed thereon being lodged."  
—"The Bankruptcy Rules, 1870," r. 239.

As regards barristers and solicitors (*c*), the following facts require notice. (6.) Barristers and solicitors.

Counsel may be employed to conduct cases in bankruptcy, and, except in matters of emergency, motions by the bar are to have precedence over those by solicitors.

Counsel to have precedence.

Solicitors may also practise in the Courts of Bankruptcy, and are entitled to be heard in person.

Solicitors may be heard in person.

On this subject, "The Bankruptcy Act, 1869," enacts as follows:—

"Every attorney and solicitor of the Superior Courts shall be and may practise as a solicitor of, and in the Court of Bankruptcy, and in matters before the Chief Judge or registrars, in the London Court of Bankruptcy, in Court or in Chambers, may appear and be heard without being required to employ counsel; and if any person not being such attorney or solicitor practises in the Court of Bankruptcy as attorney or solicitor, he shall be deemed guilty of a contempt of the Court."—32 & 33 Vict. c. 71, s. 70.

Solicitors of High Court may practice in Bankruptcy Court and have right of audience therein.

*The Bankruptcy Act, 1869, s. 70.*

It may be as well to mention here that a trustee in bankruptcy may not, without the consent of the committee of inspection (*d*), employ a solicitor, but where the trustee is himself a solicitor, he may contract to be paid a certain sum by way of percentage or otherwise, as a remuneration for his services as trustee, including his professional services, and any such contract shall, notwithstanding any law to the contrary, be lawful (*e*).

All bills and charges of attorneys are subjected to taxation, whether they concern bankruptcy or liquidation (*f*).

(*c*) "Bankruptcy Rules, 1870," rule 57.

(*d*) As to appointment of trustee in bankruptcy and committee of inspection, see *post*, pp. 1346, 1359.

(*e*) Sect. 29.

(*f*) "Bankruptcy Rules, 1871," rules 4 & 5, see *post*, p. 1317.

## BOOK VI.

### THE JURISDICTION AND PRACTICE IN BANKRUPTCY.



#### CHAPTER II.

##### TRANSFERS OF PROCEEDINGS FROM ONE COURT TO ANOTHER.

Three cases in which proceedings will be transferred.

IN the preceding chapter the general constitution and jurisdiction of County Courts as Local Courts of Bankruptcy have been considered. It has been also pointed out that the various Courts of Bankruptcy created by the Act of 1869, are to be deemed in law to be one Court (*a*). Following out the policy indicated by this last-named enactment ample powers for the transfer of proceedings have been created. Under these powers there may be either (*a*) a transfer from a Country Court to the London Court; or (*b*) a transfer from the Local Court to the London Court. Such power of transfer exists moreover in three cases, viz., (1) where a transfer to the London Court is ordered by the London Court itself; (2) where the proceedings can be more conveniently laid in a Court other than that in which they are pending; and (3) where a partner of the bankrupt has been adjudicated in a different district from that in



"will be more convenient that the proceedings in any local Bankruptcy Court should be transferred to the London Court or to some other local Court, or where the judge of a local Court certifies that in his opinion the bankruptcy would be more advantageously conducted in the London Court or in some other local Court, and the creditors do not by resolution object to the transfer, the petition shall be transferred to and all subsequent proceedings thereon had in the London Court or such other local Court."—32 & 33 Vict. c. 71, s. 80, subs. (5).

*The Bankruptcy Act, 1869, s. 80, sub-s. (5).*

It is to be noticed that under the above enactment the transfer can be made in two different modes, to either of which, however, the assent of the creditors is required.

Two modes of transfer in such cases.

One mode of transfer under the above section 80, subsection 5, is by a special resolution of the creditors themselves that such transfer shall be made.

(a.) By special resolution of creditors.

In cases where a transfer is made in this mode the registrar of the Court in which the proceedings have been originated transmits such proceedings to the registrar of the Court to which the transfer is made, in the manner directed by rule 84—presently set out. No formal or other order of transfer is needed.

—Practice in such cases.

The other mode in which a transfer is made under subsection 5 of section 80 is by the certificate of the Judge that it would be convenient, to which the creditors do not object.

(b.) By certificate of the Judge, not objected to by the creditors.

"The Bankruptcy Rules, 1870," on the same subject provide that:—

If County Court Judge certifies that bankruptcy should be conducted in London Bankruptcy Court or some other County Court, the creditors to pass resolution on subject.

"Where the Judge of a County Court certifies that in his opinion the bankruptcy would be more advantageously conducted in the London Bankruptcy Court or some other County Court, the registrar shall, if the opinion is certified before the first meeting of creditors, lay the same before such meeting, and if it has been certified after such meeting, he shall transmit a copy of such certified opinion to the trustee, who shall thereupon summon a meeting of creditors to consider the same."—"The Bankruptcy Rules, 1870," r. 82.

*The Bankruptcy Rules, 1870, r. 82.*

"If within fourteen days after transmitting such notice to the trustee no resolution of the creditors objecting to such transfer shall be received by the Court through the registrar, the transfer may be made accordingly."—"The Bankruptcy Rules, 1870," r. 83.

If creditors pass no resolution within prescribed time, transfer is made.

"Where the proceedings in any bankruptcy are transferred from the Court to which the petition was presented to any other Court, the registrar of the first Court shall send by book-post all the proceedings to the registrar of the Court to which the proceedings are transferred; and the receipt of such proceedings shall be considered to authorize the latter Court to continue such proceedings, without any further

*The Bankruptcy Rules, 1870, r. 83.*  
Duty of regis-

trar where  
petition trans-  
ferred.

*The Bank-  
ruptcy Rules.*  
1870, r. 84.

(3.) Where a  
petition  
against mem-  
ber of a firm  
filed in one  
Court, subse-  
quent petition  
to be trans-  
ferred to such  
last-mentioned  
Court.

*The Bank-  
ruptcy Act,*  
1869, s. 102.

“order for transferring them than is contained in the pro-  
ceedings.”—“The Bankruptcy Rules, 1870,” r. 84.

A form of order directing a transfer of proceedings (c), and likewise of a certificate of Judge for transfer of proceedings (d) are provided.

Thirdly, where a petition against one member of a firm is pending in any Court any bankruptcy proceedings which may be taken against other members of the firm will be transferred into the same Court. For it is provided:—

“Where one member of a partnership has been adjudicated  
“a bankrupt, any other petition for adjudication against a  
“member of the same partnership shall be filed in or trans-  
“ferred to the Court in which the first-mentioned petition is  
“in course of prosecution, and, unless the Court otherwise  
“directs, the property of such last-mentioned member shall  
“vest in the trustee appointed in respect of the property of the  
“first-mentioned member of the partnership, and the Court  
“may give such directions for amalgamating the proceedings  
“in respect of the properties of the members of the same  
“partnership as it thinks just.”—32 & 33 Vict. c. 71, s. 102.

(c) Form of Order of Transfer, Appendix V. No. 22.

(d) Form of certificate, Appendix V. No. 37.

## BOOK VI.

### THE JURISDICTION AND PRACTICE IN BANKRUPTCY.

#### CHAPTER III.

##### BY AND AGAINST WHOM PROCEEDINGS IN BANKRUPTCY MAY BE TAKEN.

A PETITION in bankruptcy can only be presented by "a creditor" or creditors to the amount of £50, and against a person who has committed an "act of bankruptcy." Proceedings by way of debtor summons may, however, be taken against a person by any "creditor," and "an act of bankruptcy" is constituted if such debtor summons be not duly obeyed. It becomes necessary, therefore, to consider in the first place, what persons are "creditors," and what acts render a debtor a person one who has "committed an act of bankruptcy."

Proceedings can only be by "creditors to extent of £50," and against persons who have committed "acts of bankruptcy."

First, then, as to who is a creditor. In bankruptcy proceedings the word comprises any person to whom a debt of the requisite amount and quality is due; such may petition for the debtor's adjudication as a bankrupt (*a*). Thus, it has been held that factors can petition (*b*).

Who is a "creditor."

The amount and quality of the debt which will support a petition is determined by "The Bankruptcy Act, 1869" (*c*), which enacts that:—

Amount and quality of debt due to petitioner.

"A single creditor, or two or more creditors if the debt due to such single creditor, or the aggregate amount of the debts due to such several creditors, from any debtor amount to a sum of not less than fifty pounds (*cc*), may present a petition to the Court, praying that the debtor be adjudged a bankrupt. . . . Moreover, the debt of the petitioning creditor must be a liquidated sum due at law or in equity (*d*), and must not be a secured debt unless the petitioner state in his petition that he will be ready to give up such security for the

*The Bankruptcy Act, 1869, s. 6.*

(*a*) Robson's Bankruptcy, 2nd ed. pp. 153—154.

(*b*) *Sadler v. Leigh*, 4 Camp. 195.

(*c*) *Post*, p. 1282, where whole of sect. 6 is set out.

(*cc*) See *post*, p. 1292, as to debt which will support a *Debtor's Summons*.

(*d*) A fusion of law and equity has now taken place by virtue of "The Supreme Court of Judicature Act, 1873" (36 & 37 Vict. c. 66), sect. 24.

"benefit of the creditors, in the event of the debtor being adjudicated a bankrupt, or unless the petitioner is willing to give an estimate of the value of his security, in which latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him, after deducting the value so estimated, but he shall, on an application being made by the trustee within the prescribed time after the date of adjudication, give up his security to such trustee for the benefit of the creditors upon payment of such estimated value."—32 & 33 Vict. c. 71, s. 6.

It will be observed that the statute says that the petitioning creditor's debt must be "*a liquidated sum due at law or in equity*." On these words, it has been held, that the debt must be "*due*" in the sense of being "*presently payable*" (*e*). And the petitioning creditor's debt must be a good petitioning creditor's debt, and must have an existence at the time of the commission of the act of bankruptcy (*f*). "That has been decided by the Judges on the ground of the manifest injustice and absurdity it would be that if a man who did any one of the acts which are called acts of bankruptcy, and who happened to have no creditors at the time, or had subsequently satisfied all his creditors, should be, on account of that, made bankrupt" (*g*). A debt barred by the Statute of Limitations (*h*), or founded on an illegal consideration, will not support a bankruptcy petition (*i*).

—Joint  
creditors.

*Joint creditors*, whether parties or otherwise, *must* join in the same petition. Whilst, on the other hand, any number of creditors, whether joint or several, *may* join in one and the same petition (*k*).

Husband and  
wife.

*As regards husband and wife*, it appears that a husband alone cannot be the petitioning creditor to support a commission of

traders and non-traders alike, liable to bankruptcy proceedings, but in the case of the latter, it preserves some of the distinctions just referred to. Thus non-traders cannot be adjudged bankrupts in respect of debts contracted before "The Bankruptcy Act, 1861." On this subject, "The Bankruptcy Act, 1869," enacts:—

"No person, not being a trader, shall be adjudged a bankrupt in respect of a debt contracted before the date of the passing of 'The Bankruptcy Act, 1861.'" (*m*)—32 & 33 Vict. c. 71, s. 118.

As regards the question, "Who are traders?" within "The Bankruptcy Act, 1869," it is provided that, "'Trader' shall for the purposes of this Act mean the several persons in that behalf mentioned in the first schedule to this Act annexed" (*n*).

As to who are traders, within the meaning of this schedule, it may be observed that, to constitute a trader, there must be something more than occasional instances of acting in any one of the above specified trades (*o*), that is to say, there must be, in addition, evidence of an intention to continue to earn a living by trade (*p*). The question whether a man be a trader is one of law, but the intention is one of fact (*q*), to be gathered from his dealings and declarations when accompanied by corresponding acts (*r*). To pass on to particular instances in which persons have been held to be traders would be to travel beyond the scope of this treatise. It will be sufficient, therefore, to state briefly that a clergyman acting as a trader is liable to be

Non-traders cannot be adjudged bankrupts in respect of debts contracted before B. A., 1869.

*The Bankruptcy Act, 1869, s. 118.*

—As traders.

(*m*) *Ex parte Canwell*, 33 L. J. Bank. 26; *Williams v. Harding*, L. R. 1 H. L. 9.

(*n*)

#### "SCHEDULE I.

##### "DESCRIPTION OF TRADERS.

"Alum makers, apothecaries, auctioneers, bankers, bleachers, brokers, brick-makers, builders, calenderers, carpenters, carriers, cattle or sheep salesmen, coach proprietors, cowkeepers, dyers, fullers, keepers of inns, taverns, hotels, or coffee houses, lime-burners, livery stable keepers, market gardeners, millers, packers, printers, sharebrokers, shipowners, shipwrights, stockbrokers, stock-jobbers, victuallers, warehousemen, wharfingers, persons using the trade or profession of a scrivener, receiving other men's monies or estates into their trust or custody, persons insuring ships or their freight or other matters against perils of the sea, persons using the trade of merchandise by way of bargaining, exchange, bartering, commission, consignment, or otherwise, in gross or by retail, and persons who, either for themselves or as agents or factors for others, seek their living by buying and selling or buying and letting for hire goods or commodities, or by the workmanship or the conversion of goods or commodities; but a farmer, grazier, common labourer or workman for hire shall not, nor shall a member of any partnership, association, or company which cannot be adjudged bankrupt under this Act, be deemed as such a trader for the purposes of this Act."

(*o*) *Bartholomew v. Sherwood*, 1 T. R. 573.

(*p*) *Millikin v. Brandon*, 1 C. & P. 380; *Patman v. Vaughan*, 1 T. R. 572; *Holroyd v. Gwynne*, 2 Taunt. 178.

(*q*) *Millikin v. Brandon*, 1 C. & P. 380; *Williams' Bankruptcy*, (2nd ed.) p. 23.

(*r*) *Gale v. Halfknight*, 3 Sta. 56; *Brinley v. King*, 1 C. & P. 646.

made a bankrupt as such (*s*). And that it has recently been held that a professional nurse, who kept a lodging-house for invalids and supplied them with board at a profit, as well as lodging and nursing, is a keeper of an hotel, and therefore a trader within "The Bankruptcy Act, 1869" (*t*). As to whether a *retired* trader can be adjudged a bankrupt *qua* trader, if old trade debts exist, is doubtful (*u*).

Enumeration  
of "acts of  
bankruptcy."

Subject to the distinction between traders and non-traders which renders certain things acts of bankruptcy in the case of a trader which are not acts of bankruptcy in the case of a non-trader, a section in "The Bankruptcy Act, 1869," contains a complete enumeration of the various "acts of bankruptcy," the commission of which renders a person liable to be adjudicated a bankrupt. Such section is as follows:—

Who may  
present a  
petition in  
bankruptcy,  
and what it  
must allege.  
*The Bank-  
ruptcy Act,*  
1869, s. 6.

"A single creditor, or two or more creditors if the debt due to such single creditor, or the aggregate amount of debts due to such several creditors, from any debtor, amount to a sum of not less than fifty pounds (*x*), may present a petition to the Court, praying that the debtor be adjudged a bankrupt, and alleging as the ground for such adjudication any one or more of the following acts or defaults hereinafter deemed to be and included under the expression 'acts of bankruptcy':"

- "(1.) That the debtor has, in England or elsewhere, made
  - "a conveyance or assignment of his property to
  - "a trustee or trustees for the benefit of his
  - "creditors generally:
- "(2.) That the debtor has, in England or elsewhere, made
  - "a fraudulent conveyance, gift, delivery, or
  - "transfer of his property or of any part
  - "thereof:
- "(3.) That the debtor has, with intent to defeat or delay

“(5.) That execution issued against the debtor on any  
 “ legal process for the purpose of obtaining pay-  
 “ ment of not less than fifty pounds has in the  
 “ case of a trader been levied by seizure and sale  
 “ of his goods :

“(6.) That the creditor presenting the petition has served  
 “ in the prescribed manner on the debtor a  
 “ debtor's summons requiring the debtor to pay  
 “ a sum due, of an amount of not less than fifty  
 “ pounds, and the debtor being a trader has for  
 “ the space of seven days, or not being a trader  
 “ has for the space of three weeks, succeeding  
 “ the service of such summons, neglected to  
 “ pay such sum, or to secure or compound for  
 “ the same (z).

“ But no person shall be adjudged a bankrupt on any of the  
 “ above grounds unless the act of bankruptcy on which the  
 “ adjudication is grounded has occurred within six months  
 “ before the presentation of the petition for adjudication ;  
 “ moreover, the debt of the petitioning creditor must be a  
 “ liquidated sum due at law or in equity, and must not be a  
 “ secured debt, unless the petitioner state in his petition that  
 “ he will be ready to give up such security for the benefit of  
 “ the creditors, in the event of the debtor being adjudicated  
 “ a bankrupt, or unless the petitioner is willing to give an esti-  
 “ mate of the value of his security, in which latter case he may  
 “ be admitted as a petitioning creditor to the extent of the  
 “ balance of the debt due to him after deducting the value so  
 “ estimated, but he shall, on an application being made by the  
 “ trustee within the prescribed time after the date of adjudica-  
 “ tion, give up his security to such trustee for the benefit of the  
 “ creditors upon payment of such estimated value.”—32 & 33  
 Vict. c. 71, s. 6.

As regards the joining several debtors in the same petition  
 as respondents, “ The Bankruptcy Act, 1869,” enacts :—

“ Any creditor whose debt is sufficient to entitle him to pre-  
 “ sent a bankruptcy petition against all the partners of a firm  
 “ may present such petition against any one or more partners  
 “ of such firm without including the others.”—32 & 33 Vict.  
 c. 71, s. 100.

“ Where there are more respondents than one to a petition  
 “ the Court may dismiss the petition as to one or more of them,

“ be filed in the London Bankruptcy Court, if the debtor shall reside or carry on  
 “ business within the district of that Court, and where the debtor neither resides  
 “ nor carries on business within the district of that Court, it shall be filed in the  
 “ Court within the district of which the debtor resides or carries on business.”  
 —“ The Bankruptcy Rules, 1870,” Rule 16.

A form of declaration of inability to pay is provided (see Appendix. V. Form  
 No. 1).

(z) See *post*, rule 65.

Joinder of  
 debtors in  
 the same  
 petition.  
 Creditor may  
 present peti-  
 tion against  
 one member  
 of a firm.  
*The Bank-  
 ruptcy Act*,  
 1869, s. 100.  
 Petition may  
 be dismissed  
 as against  
 one or more  
 of several  
 respondents.  
*The Bank-  
 ruptcy Act*,  
 1869, s. 101.

Decisions as to capacity of particular persons to be parties to bankruptcy proceedings.

Persons in a representative capacity.

—Trustees.

—Executors.

Aliens.

—Alien enemies.

—Alien friends.

“without prejudice to the effect of the petition as against the other or others of them.”—32 & 33 Vict. c. 71, s. 101.

Such being the general principles as to what persons can be parties to proceedings in bankruptcy, it will be convenient here to mention the principles which govern the capability of certain particular classes of persons to be parties to proceedings in bankruptcy ; and to state some of the leading decisions on this subject.

Petitions in bankruptcy against other persons may, it would appear, be presented by persons occupying a representative capacity.

Thus, for example, a trustee can present such a petition, though it seems the *cestui que trust* must concur (*a*).

So also it has been held that executors may present petitions in bankruptcy (*b*).

With regard to aliens, the law appears to be as follows :—

Alien enemies would, on general principles, appear to be on the same footing as outlaws—whose position will be considered presently.

Alien friends may petition. “The Bankruptcy Act, 1849,” contained an express provision on the subject (section 277). But “The Bankruptcy Act, 1869,” makes no mention of aliens.

Aliens can certainly be made bankrupts, but it is important to remember that circumstances, which, in the case of a domiciled Englishman, might amount to an act of bankruptcy, will not *necessarily* have this effect in the case of an alien. Thus, though in the case of a domiciled Englishman, the fact of his leaving England after service of a writ will afford a strong presumption that he intended to defeat and delay his creditors and had therefore committed an act of bankruptcy,



33 & 34 Vict. c. 23, the provisions of which have already been referred to in a previous part of this Work (e).

Outlaws are absolutely incapable of taking bankruptcy proceedings, though it is submitted that they are liable to such proceedings. —Or outlaws.

The principal persons who are under a qualified disability are, it will be recollected (ee), infants, married women, and lunatics. Qualified disability.

It has been very recently decided that an infant cannot be lawfully adjudicated a bankrupt in respect of trade debts—if, indeed, at all (f). It has, however, been suggested that possibly an infant may be made a bankrupt in respect of judgment debts and debts contracted by him for necessities supplied (g). And it has recently been held that, notwithstanding the provisions of “The Infants Relief Act, 1874,” a debtor who has traded while under age can, after he has attained full age, be adjudicated a bankrupt in respect of a trade debt contracted, and upon an act of bankruptcy committed during his infancy (h). —Infants.

An infant creditor may issue a debtor’s summons in his own name (i). But it seems that, in such a case, the debtor would be entitled, if he asked for it, to have some adult person named as security for the costs of the summons. But if he makes no such application, but allows the summons to proceed in the ordinary way, an adjudication of bankruptcy, founded upon non-compliance with it, is valid (i).

A married woman who is trading in London as a *feme sole*, or who has obtained a judicial separation or protection order under 20 & 21 Vict. c. 85, or whose husband is *civilter mortuus*, has abjured the realm or is in exile, or who is entitled to the debt for her separate use, may present a petition in bankruptcy. —Married women.

A married woman trading in London as a *feme sole*, may be made a bankrupt (k); or whose husband is *civilter mortuus*, or has abjured the realm or is in exile, or under sentence of transportation (l), or who has obtained an order for protection or judicial separation under 20 & 21 Vict. c. 85.

It has recently been held that a married woman, though married after “The Married Women’s Property Act, 1870” (33 & 34 Vict. c. 93), and before the passing of “The Married Women’s Property Act, 1874” (37 & 38 Vict. c. 50), cannot

(e) Book II. cap. ii. p. 216.

(ee) See Book II. cap. ii., ante, pp. 217 et seq.

(f) *Reg. v. Wilson*, L. E. 5 Q. B. Div. 28.

(g) See Williams’ Bankruptcy, (2nd ed.) p. 7.

(h) *Ex parte Lynch*; *In re Lynch*, 2 Ch. D. 227, but see *Miller v. Blankley*, 38 L. T. 527.

(i) *Ex parte Brocklebank*; *re Brocklebank*, 6 Ch. D. 358.

(k) Christian’s Bankrupt Law, Vol. I. (2nd ed.) pp. 69–74, and see *Ex parte Carrington*, 1 Atk. 206.

(l) *Ex parte Franks*, 7 Big. 764; *Sparrow v. Carruther*, 2 W. Bl. 1197.

be made a bankrupt in respect of debts contracted *before* marriage (*m*).

In the case referred to, however, the married woman had no separate property. But it would seem that even if she possesses separate property, she cannot be made a bankrupt, because a judgment obtained by a debtor of the married woman is not against her at all, but against her property (*n*).

—Lunatics.

Lunatics may, it would seem, petition; and they may, it appears, be petitioned against in bankruptcy in respect of debts the amount of which could have been recovered from them in an action (*o*), and in respect of debts contracted, and acts of bankruptcy committed during lucid intervals (*p*).

Persons privileged.

It has been seen, in a previous part of this Work (*q*), that certain persons are *absolutely* privileged from being sued, while others are only *partially* privileged. Many of the *first* class of privileged persons—such as sovereigns, foreign governments, and ambassadors—*possibly* enjoy a like privilege from being made bankrupts. The sovereign, of course, is exempt. But no such privilege can be claimed by Judges. And, with regard to those persons who enjoy a *partial* privilege from being sued, they obviously are all liable to be made bankrupts. For *cessante ratione, cessat lex ipsa*.

Persons having privilege of Parliament.

*The Bankruptcy Act, 1869, s. 120.*

As regards persons who are members of the House of Lords (*r*), or of the House of Commons, “The Bankruptcy Act, 1869,” enacts that:—

“If a person having privilege of Parliament commits an act of bankruptcy he may be dealt with under this Act in like manner as if he had not such privilege.”—32 & 33 Vict. c. 71, s. 120.

Corporations.

The instances which we have hitherto been considering of

“sued in the name of a public officer or agent of such co-partnership, may be presented by or sued out by such public officer or agent as the nominal petitioner or plaintiff for and on behalf of such co-partnership, on such public officer or agent filing an affidavit, according to the form in the schedule, stating that he is such public officer or agent, and that he is authorized to present or sue out such petition or debtor’s summons. Where a corporate body is petitioner or plaintiff, any affidavit in support of such petition or debtor’s summons may be made by a director or other officer on its behalf.”—*The Bankruptcy Rules, 1870, r. 15.*

It is to be noticed that the above rule provides that a bankruptcy petition or debtor’s summons by a co-partnership, authorized to sue and be sued in the name of a public officer or agent thereof; may be presented by or sued out by such public officer or agent on his filing an affidavit “*according to the form in the schedule,*” stating that he is such public officer or agent, and that he is authorized to present or sue out such petition or debtor’s summons. Now it is necessary to observe that, as a matter of fact, no form whatever is given of this affidavit in the schedule to the rules. This omission is, however, of less consequence, as the above rule states what the affidavit must contain—that is to say, it must state (1) that the deponent is the public officer or agent of the company; and (2) that such deponent is authorized to present or sue out the petition or debtor’s summons. In drawing the affidavit, it is most desirable to adhere strictly, and, indeed, verbally, to these requirements, so as to avoid all question as to its sufficiency. For there is some conflict of authority as to the degree of adherence to the provisions of this rule with which an affidavit must be framed. Thus, in *Allen v. Thompson* (t), it was held that, with respect to the affirmation of a public officer, his *description* as the registered public officer of the company was sufficient without an *express statement* to that effect in the body of the affirmation. In the subsequent case of *Ex parte Torrington, In re Torrington* (u), in which, however, the previous case was not cited, the Court of Appeal (x), held that an affidavit filed by the public officer of a company in support of a debtor’s summons, in which he was *described* as the registered public officer of the company, but which did not contain an express statement that he was such public officer, or that he was authorized to sue out the summons, was insufficient, and dismissed the summons for irregularity. However, in the still more recent case of *Ex parte Lowenthal, In re Lowenthal* (y), where the affidavit only *described* the de-

(t) 2 Jur. (N. S.) 451.

(u) 9 Ch. App. 298.

(x) *I.e.* Lord Chancellor Cairns, Lord Selborne, and James and Mellish, LL.

JJ.

(y) L. R. 9 Ch. App. 324.

ponent as the registered public officer of the company, but contained no *express statement* to that effect ; and also contained a statement *that he was authorized to make the affidavit*, but did not state *that he was authorized to sue out the debtor's summons*, the Court of Appeal (z) held that the affidavit sufficiently complied with rule 15 of "The Bankruptcy Rules, 1870." In this case, it is right to mention, the previous cases were fully discussed and *Allen v. Thompson* (zz) was upheld. It was, moreover, pointed out by *Mellish*, L. J., that in *Ex parte Torrington*, there were "also other irregularities in the affidavit upon which the decision of the Court was founded." And it is to be observed that in the case referred to, the affidavit not only contained no express statement that the public officer was authorized to sue out the summons, but, unlike the affidavit in *Ex parte Lowenthal*, actually alleged nothing from which any such authority could be *inferred*. Upon the whole, therefore, it is presumed that the decision in *Ex parte Lowenthal*, *In re Lowenthal*, will be followed in future cases. But in drawing the affidavit, it will be better to describe the deponent as a public officer, to state affirmatively in the body of the affidavit he is such public officer, and also that he is authorized to present or sue out the petition or debtor's summons.

It has been held that a debtor's summons, taken out in the name of the secretary of a company limited, for a debt due to the company, is irregular (a).

—But cannot  
be themselves  
adjudicated  
bankrupt.

Though, as we have seen, persons may be made bankrupts at the instance of companies, yet registered companies are themselves excluded from the operation of "The Bankruptcy Act, 1869 ;" but it is now provided that in cases of winding up of any company under "The Companies Acts, 1862 & 1867," the same rules shall be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities

## BOOK VI.

### THE JURISDICTION AND PRACTICE IN BANKRUPTCY.

#### CHAPTER IV.

##### IN WHAT DISTRICT PROCEEDINGS IN BANKRUPTCY SHOULD BE COMMENCED.

THE selection of the district in which to commence bankruptcy proceedings is a matter of great importance, but at the same time it is not a matter of much difficulty.

As already has been seen, it is provided by section 59 (*a*) of "The Bankruptcy Act, 1869," that :—

"If the person sought to be adjudged a bankrupt, being resident in England, do not reside or carry on business within the London bankruptcy district (*b*), then 'the Court' shall, subject to the provisions hereinafter contained for removing the proceedings, mean the County Court of the district in which such person resides or carries on business, hereinafter referred to as 'The Local Bankruptcy Court' " (*c*).

In addition to the above enactment contained in "The Bankruptcy Act, 1869," it is by "The Bankruptcy Rules, 1870," further provided as follows :—

"A bankruptcy petition shall be filed in the London Bankruptcy Court if the debtor resides or carries on business within the district of that Court, and where the debtor neither resides nor carries on business within the district of that Court, it shall be filed in the Court within the district of which the debtor resides or carries on business" (*d*).—"The Bankruptcy Rules, 1870," r. 26.

The remarks already made, on an early page of this work (*e*),

Selection of district in which to commence bankruptcy proceedings.

*The Bankruptcy Act, 1869, s. 59.*

Petition to be filed in that Court within the district of which debtor resides or carries on business.

*The Bankruptcy Rules, 1870, r. 26.*

Meaning of

(*a*) See sect. 59 of "The Bankruptcy Act, 1869," set out in full, *ante*, p. 1254.

(*b*) What this includes, see *ante*, p. 1255.

(*c*) As to the different districts for bankruptcy purposes, see *ante*, cap. i. of this Book, at p. 1256.

(*d*) Appendix V. Form 10 is the form of petition, and see *post*, pp. 1301 *et seq.*

(*e*) See *ante*, Book II. cap. v. pp. 265 *et seq.*

the terms  
"dwell" or  
"carry on  
business."

in regard to the meaning of the expressions "*dwell*" and "*carry on business*," (which occur in section 3 of "The County Courts Act, 1865," 30 & 31 Vict. c. 142), will throw light on the meaning attaching to the phrases "*reside*" and "carry on business," which are to be found in section 59 of "The Bankruptcy Act, 1869," and in the rule above cited.

## BOOK VI.

### THE JURISDICTION AND PRACTICE IN BANKRUPTCY.

#### CHAPTER V.

##### DEBTOR SUMMONSES.

It has already been pointed out (*a*), that no person can be made a bankrupt unless he has committed an act of bankruptcy. But it not unfrequently happens that a person is really hopelessly in debt, and quite unable to pay his creditors, and yet has not given any *legal* indication of this state of things by committing an act of bankruptcy. Under such circumstances, in order to make a person a bankrupt, it is necessary, before presenting the petition, to issue a *debtor's* summons, requiring a debtor to pay a debt of not less than £50 (*b*). Then, if the debtor, being a *trader*, does for the space of *seven days*, or, *not being a trader*, does for the space of *three weeks*, succeeding the service of such summons, neglect to pay such sum or to secure or compound for the same, he shall be deemed to have committed one of those acts of bankruptcy which, by section 6 of "The Bankruptcy Act, 1869," will support a petition in bankruptcy (*c*). Such an act of bankruptcy, it is to be noticed, dates from the expiration of the time limited for payment, even though time may have been given to the debtor to give security (*d*), and is available only on the petition of the summoning creditors (*e*). And it appears that if a person who is really indebted does not pay, after the issuing of a debtor's summons against him, he "*neglects*" to pay within the meaning of section 6 of "The Bankruptcy Act, 1869" (*f*).

As to *when* a debtor's summons will be granted, "The Bankruptcy Act, 1869," provides as follows:—

Object of a "debtor summons" is to oblige the debtor to pay or to commit an "act of bankruptcy."

In what cases a "debtor summons" may be issued.

(*a*) See *ante*, cap. iii. of this book, at p. 1279.

(*b*) 32 & 33 Vict. c. 71, s. 6, *ante*, pp. 1282, 1283.

(*c*) 32 & 33 Vict. c. 71, s. 6, sub-sect. (6), *ante*, p. 1283.

(*d*) *Ex parte Weir*, 41 L. J. (N. S.) Bank. 41.

(*e*) *Ibid.*

(*f*) *Ex parte Weir* (*ubi supra*).

*The Bank-  
ruptcy Act,  
1869, s. 7.*

“ A debtor’s summons may be granted by the Court on a  
“ creditor proving to its satisfaction that a debt sufficient to  
“ support a petition in bankruptcy is due to him from the  
“ person against whom the summons is sought, and that the  
“ creditor has failed to obtain payment of his debt, after using  
“ reasonable efforts to do so. The summons shall be in the  
“ prescribed form, resembling as nearly as circumstances admit,  
“ a writ issued by one of Her Majesty’s Superior Courts. It  
“ shall state that in the event of the debtor failing to pay  
“ the sum specified in the summons, or to compound for the  
“ same to the satisfaction of the creditor, a petition may be  
“ presented against him praying that he may be adjudged a  
“ bankrupt. The summons shall have an endorsement thereon  
“ to the like effect, or such other prescribed endorsement as  
“ may be best calculated to indicate to the debtor the nature  
“ of the document served upon him, and the consequences of  
“ inattention to the requisitions therein made.

“ Any debtor served with a debtor’s summons may apply to  
“ the Court, in the prescribed manner and within the prescribed  
“ time, to dismiss such summons, on the ground that he is not  
“ indebted to the creditor serving such summons, or that he is  
“ not indebted to such amount as will justify such creditor in  
“ presenting a bankruptcy petition against him ; and the Court  
“ may dismiss the summons, with or without costs, if satisfied  
“ with the allegations made by the debtor, or it may, upon  
“ such security (if any) being given as the Court may require  
“ for payment to the creditor of the debt alleged by him to be  
“ due, and the costs of establishing such debt, stay all proceed-  
“ ings on the summons for such time as will be required for the  
“ trial of the question relating to such debt : Provided that  
“ when the summons shall have issued from the London Court



than the debt (*i*). For, in estimating the sum of £50, no deduction must be made in respect of the value of securities (*k*).

As to the Court to which application for a debtor's summons must be made, "The Bankruptcy Rules, 1870," provide as follows:—

"A debtor's summons, according to the form in the schedule (*l*), may be granted by the London Bankruptcy Court, if the debtor resides or carries on business within the district of that Court, and where the debtor neither resides nor carries on business within the district of that Court, it may be granted by the Court within the district of which the debtor resides or carries on business."—"The Bankruptcy Rules, 1870," r. 17.

The proceeding by debtor's summons is a statutory proceeding of a very special and stringent character. It is, therefore, necessary that all proper forms be strictly adhered to (*m*).

The mode of obtaining the grant of a debtor's summons is indicated by "The Bankruptcy Rules, 1870," which provide as follows:

"A creditor desirous that a debtor's summons may be granted must file an affidavit (*n*) of the truth of his debt, and lodge the summons, together with two copies thereof, and three copies of his particulars of demand."—"The Bankruptcy Rules, 1870," r. 18.

"The particulars of demand shall be expressed with reasonable and convenient certainty as to dates and all other matters, but no objection shall be allowed to the particulars unless the Court shall consider that the debtor has been misled by them."—"The Bankruptcy Rules, 1870," r. 19 (*o*).

"The registrar shall seal such particulars, and such particulars shall then be deemed part of the summons, and the original summons shall be filed and the copies be sealed and issued to the creditor."—"The Bankruptcy Rules, 1870," r. 20.

The form of affidavit in support of an application for a debtor's summons is provided (*n*). The particulars should be definite and distinct (*o*). An affidavit in compliance with the forms thus provided has been held to be sufficient, although such form is not in strict accordance with section 7 of the Act (*p*).

The form of a debtor's summons is, to a very great extent,

To what Court application for debtor's summons to be made.

Debtors summons may be granted by Court within the district of which debtor resides or carries on business.

*The Bankruptcy Rules, 1870, r. 17.*

Mode of obtaining the grant of a debtor's summons.

What documents creditor applying for debtor's summons must lodge.

*The Bankruptcy Rules, 1870, r. 18.*

Particulars of demand to be clearly stated.

*The Bankruptcy Rules, 1870, r. 19.*

Particulars deemed part of summons.

*The Bankruptcy Rules, 1870, r. 20.*

Form of affidavit in support of particulars.

Form of a

(*i*) *In re Giles*; *ex parte Mauritz*, 39 L. J. (N. S.) Bank. 56.

(*k*) Per James, L. J. in *In re Giles*, (*ubi supra*).

(*l*) Appendix V. Form No. 4.

(*m*) *Re Hodges*, L. R. 8 Ch. 204.

(*n*) Forms No. 2 and No. 3 in Appendix V.

(*o*) See *ex parte Jaral*; *re Jaral*, 34 L. J. (N. S.) 47.

(*p*) See *ex parte Rowan*, *In re Kiddell*, L. R. 9 Ch. App. 617.

debtor's summons.

prescribed by section 7 of "The Bankruptcy Act, 1869" (*q*). But a full precedent is provided in the Appendix of Bankruptcy Forms (*r*).

Indorsements on the summons.

A debtor's summons must have certain indorsements. "The Bankruptcy Rules, 1870," provide as follows with regard to these :—

—Name, &c., of solicitor.

*The Bankruptcy Rules, 1870, r. 21.*

"Every debtor's summons shall be endorsed with the name and place of business of the attorney actually suing out the same, but in case no attorney shall be employed for the purpose, then with a memorandum expressing that the same has been sued out by the creditor in person (*s*)."—"The Bankruptcy Rules, 1870," r. 21.

—Notice to debtor of result of non-compliance with summons.

*The Bankruptcy Rules, 1870, r. 22.*

"There shall be endorsed on the debtor's summons, in addition to an intimation of the consequences of neglect to comply with the requisitions of the summons, a notice to the debtor that if he disputes the debt, and desires to obtain the dismissal of the summons, he must file an affidavit with the registrar within seven days in the case of a trader, and three weeks in the case of a non-trader, stating that he is not so indebted, or only so to a less amount than £50" (*t*).—"The Bankruptcy Rules, 1870," r. 22.

Service of the debtor's summons.

Like the petition in bankruptcy, the debtor's summons must be *personally* served, but the time limited for service is much longer than in the case of a bankruptcy petition; "The Bankruptcy Rules, 1870," providing that :—

Debtor's summons to be personally served.

*The Bankruptcy Rules, 1870, r. 59.*

"A debtor's summons shall be personally served within twenty-one days from the date of the summons, by delivering to the debtor a sealed copy of the summons."—"The Bankruptcy Rules, 1870," r. 59.

The debtor's summons is, like all other process of the Court, served upon the debtor by an officer or a bailiff of the Court, or by the creditor or his solicitor (*x*). Where a debtor's sum-

able to effect personal service of a debtor's summons upon him, or to discover that he had any residence other than his old one, at which he was not to be found, it was held by the Court of Appeal (reversing the decision of Bacon, C.J.,) that the *Greenwich* Court had jurisdiction to order substituted service of the summons (z).

Any application for extension of time for service of a debtor's summons must be in writing, but need not be supported by affidavit, unless indeed the Court shall otherwise require (a). Service of a summons is proved by affidavit, with a sealed copy of the summons attached, and filed in Court forthwith after the service (b). A form of affidavit is provided (c).

A debtor's summons cannot be served beyond the jurisdiction (d). Accordingly, it was held, in a recent case, that there was no power to order service of a summons in Ireland on a person who actually *de facto* at the moment was living in Ireland at his own residence there, and had nothing whatever at the time which could, either *de facto* or by construction of law, be deemed to be his residence in England, even though the debt, in respect of which the summons was issued, had been made the subject of proceedings in England, which had resulted in favour of the creditor (e).

However, on the other hand, it has also been recently decided that a foreigner can issue a debtor's summons against another foreigner, who happens at the time to be in this country, in respect of a debt contracted abroad (f).

The debtor's summons having been duly served upon the debtor, if there is probable reason for believing that he is about to go abroad with a view to avoiding, delaying, or embarrassing proceedings in bankruptcy, the Court may issue a warrant for his arrest. On this subject, "The Absconding Debtors Act, 1870," provides as follows:—

"Whereas the laws now in force for the arrest of debtors absconding from England are insufficient for that purpose:

"And whereas frauds may be perpetrated upon creditors by insolvent debtors departing for distant countries before the necessary proceedings can be taken to make them bankrupt: be it enacted, &c.

"That the provisions of 'The Bankruptcy Act, 1869,' be extended in manner following:—

Service when debtor is out of the jurisdiction.

Arrest of the debtor against whom a debtor's summons has been issued.

*The Absconding Debtors Act, 1870. Preamble.*

Arrest of a debtor about to abscond

(z) *Ex parte North Kent Bank; In re Holdsworth*, 9 Ch. D. 333.

(a) Rule 64, *post*, p. 1304.

(b) Rule 63, *post*, pp. 1304—1305.

(c) Appendix V. Form No. 5.

(d) *Ex parte O'Loghlen*, 40 L. J. (N. S.) Bank. 28; S. C. L. R. 6 Ch. App. 406.

(e) *Ib.*

(f) *Ex parte Pascal*, 34 L. T. Rep. (N. S.) 10. In this case, James, L. J., said, "I perhaps said more in *Ex parte O'Loghlen* (*ubi supra*) than I ought to have done."

after granting of a debtor's summons and presentation of a bankruptcy petition.

*The Absconding Debtors Act, 1870, s. 1.*

No arrest valid under Act unless after service of debtor's summons.

*The Absconding Debtors Act, 1870, s. 2.*

Payment or composition after arrest may be a fraudulent preference.

*The Absconding Debtors Act, 1870, s. 3.*

Construction of Act.

*The Absconding Debtors*

"The Court may, by warrant addressed to any constable or prescribed officer of the Court, cause a debtor to be arrested and safely kept as prescribed until such time as the Court may order, if, after a debtor's summons has been granted in the manner prescribed by the said Act, and before a petition of bankruptcy can be presented against him, it appear to the Court that there is probable reason for believing that he is about to go abroad, with a view of avoiding payment of the debt for which the summons has been granted, or of avoiding service of a petition of bankruptcy, or of avoiding appearing to such petition, or of avoiding examination in respect of his affairs, or otherwise avoiding, delaying, or embarrassing proceedings in bankruptcy: Provided always, that nothing herein contained shall be construed to alter or qualify the right of the debtor to apply to the Court in the prescribed manner to dismiss the said summons as in the said Act is provided, or to pay, secure, or compound for the said debt within the time by the said Act provided, without being deemed to have committed an act of bankruptcy; and provided also, that upon any such payment or composition being made, or such security offered as the Court shall think reasonable, the said debtor shall be discharged out of custody, unless the Court shall otherwise order."—33 & 34 Vict.

c. 76, s. 1.

"No arrest shall be valid or protected under this Act unless the debtor, before or at the time of his arrest, shall be served with the debtor's summons."—33 & 34 Vict.

c. 76, s. 2.

"No payment or composition of a debt made or security for the same given after an arrest made under the provisions of this Act shall be exempted from the provisions of the said

Let us, in the next place, see what steps may be taken by the debtor to obtain the dismissal of the debtor's summons.

It will be convenient to consider (1) on what grounds the application to dismiss a debtor's summons may be made ; (2) the mode of making the application ; (3) the effect of application to dismiss ; and, (4) the hearing of an application to dismiss a debtor's summons.

First : as to the grounds on which the application may be made.

On this subject, "The Bankruptcy Act, 1869," provides as follows :—

"Any debtor served with a debtor's summons may apply to the Court, in the prescribed manner and within the prescribed time, to dismiss such summons, on the ground that he is not indebted to the creditor serving such summons, or that he is not indebted to such amount as will justify such creditor in presenting a bankruptcy petition against him ; and the Court may dismiss the summons, with or without costs, if satisfied with the allegations made by the debtor, or it may, upon such security (if any) being given as the Court may require for payment to the creditor of the debt alleged by him to be due, and the costs of establishing such debt, stay all proceedings on the summons for such time as will be required for the trial of the question relating to such debt : Provided that when the summons shall have issued from the London Court of Bankruptcy, such trial shall be had either before such Court or before any other Court of competent jurisdiction, and when the summons shall have issued from a County Court before such Court in all cases in which it has now jurisdiction, and in all other cases before some competent tribunal."—32 & 33 Vict. c. 71, s. 7 (*h*).

It is to be noticed that the above section provides that a debtor may apply to the Court to have the summons dismissed on two grounds, and those only (*i*), namely, (1) On the ground that he is not indebted to the creditor serving such summons ; and, (2) on the ground that he is not indebted to such amount as will justify such creditor in presenting a bankruptcy petition against him. Accordingly, where E., having recovered in an action of ejectment against K., judgment with costs, which were taxed at £59, took out a debtor's summons against K. in respect of these costs, it was held, reversing the decision of the Registrar, that no order to dismiss the summons and to stay proceedings ought to be made where the ground alleged by the debtor (K.) was that an action brought by him against E. was pending, in which he *claimed* from the latter a sum exceeding £59 (*k*).

Applications to dismiss a debtor's summons.

(1.) Grounds on which application to dismiss debtor's summons may be made.

*The Bankruptcy Act, 1869, s. 7.*

(*h*) This section is set out in full *ante*, p. 1291—1292.

(*i*) Per James, L. J. in *Ex parte Wier*, 40 L. J. N. S. Bank. 77.

(*k*) *Ex parte Ellis ; re Kain*, 40 L. J. N. S. Bank. 77.

(2.) Mode of making application to dismiss debtor's summons.

—Affidavit in opposition to summons.

Registrar to fix time and place for hearing of application.

*The Bankruptcy Rules, 1870, r. 23.*

Secondly : as to the *mode* of making the application to dismiss a debtor's summons.

The first thing to be done is for the debtor to file with the registrar within seven days in the case of a trader, and three weeks in the case of a non-trader, an affidavit (*l*), stating that he is not indebted to the creditor presenting the summons, or only so to a less amount than £50 (*m*).

When this affidavit has been filed as aforesaid, the registrar fixes the time and place for the hearing of the application, and gives notice thereof to the creditor and debtor as provided by the following rule of "The Bankruptcy Rules, 1870":—

"Where a debtor files the above-mentioned affidavit the registrar shall fix the time and place at which the application for the dismissal of the summons will be heard by the Court, and give notice thereof to the creditor and debtor three days before the day so fixed."—"The Bankruptcy Rules, 1870," r. 23.

It has been held that, in pursuance of this rule, the registrar should appoint as early a day as possible, after the expiration of the three days' prescribed notice for hearing the debtor's application, as the business of the Court will allow (*n*).

Thirdly : as to the effect of the application to dismiss a debtor's summons.

"The Bankruptcy Rules, 1870," provide as follows:—

"A debtor shall not be adjudged bankrupt on a petition in which the act of bankruptcy stated to have been committed by him is that the debtor has neglected to pay, secure, or compound with the petitioner a sum mentioned in a debtor's summons within seven days or three weeks, as the case may be, where such debtor shall have applied for the dismissal of such summons until after the hearing of the application, or

(3.) Effect of application to dismiss debtor's summons.

Debtor not to be adjudged bankrupt until after hearing of application to dismiss debtor's

though perhaps somewhat misleading, is really quite consistent with this construction. For it only holds out to the debtor that he will not be adjudged a bankrupt and does not hold out that he will not commit an act of bankruptcy if he really owes the debt and does not pay it within the twenty-one days (*p*).

Fourthly : it remains to consider the proceeding on the hearing of an application to dismiss a debtor's summons. On such hearing there are three possible results. To begin with, the application may itself be dismissed.

Next, the summons itself may be dismissed with costs in accordance with the following rule of "The Bankruptcy Rules, 1870" :—

"Where proceedings on a debtor's summons have been stayed for the trial of the question of the validity of the debt claimed therein, and such question has been decided against the validity of the debt, the debtor on production of the judgment of the Court, or an office copy thereof, shall be entitled to have the summons dismissed and, if the Court thinks fit, with costs, but the order for costs shall not be enforced for seven days or where the creditor has lodged a notice showing that he has taken the necessary steps to set aside the judgment, until after the final decision thereon" (*q*).  
—"The Bankruptcy Rules, 1870," r. 24.

Fifthly : the proceedings on the debtor's summons may be stayed on security being given. When this course is adopted the following rule of "The Bankruptcy Rules, 1870," applies :—

"Where proceedings on a debtor's summons are stayed upon security being given, the creditor shall take or continue proceedings for the payment of the debt within twenty-one days of the date on which the security was completed, and shall prosecute the same with effect and without delay, and if he fail so to do the debtor shall be entitled to have the summons dismissed with costs."—"The Bankruptcy Rules, 1870," r. 25.

Instead of resisting the debtor's summons and applying for it to be dismissed, the debtor may of course pay the debt in respect of which it issued. And it may be mentioned that if the debtor against whom a debtor's summons has been issued, after making default in respect thereof (thereby committing an act of bankruptcy), pays the summoning creditor the debt in full, the act of bankruptcy previously committed ceases to be one on which the debtor can be adjudged a bankrupt and to which the title of the trustee relates back under section 11 (*r*). Consequently, a creditor can safely receive payment of the debt under the circumstances just described (*s*).

(4.) Hearing of an application to dismiss debtor's summons.

—Refusal of application to dismiss.

—Dismissal of debtor's summons.

*The Bankruptcy Rules, 1870, r. 24.*

(5.) Stay of proceedings on security being given.

*The Bankruptcy Rules, 1870, r. 25.*

Payment by debtor of amount claimed by debtor's summons.

(*p*) *Ex parte Wier; In re Wier (ubi supra)*.

(*q*) Form No. 9 is order on application to dismiss debtor's summons.

(*r*) *Ex parte Wier; In re Wier*, 41 L. J. N. S. Bank. 14, and see *ante*, p. 1298, and *post*, p. 1329.

(*s*) *Ib.*

Effect of non-compliance with a debtor's summons.

The effect of non-compliance with a debtor's summons is that as soon as the debtor has made default, a petition may be presented alleging such default as an act of bankruptcy (*t*). And as has been seen on a previous page (*u*), a petition may be presented even pending an application by the debtor to dismiss the debtor's summons.

The mode of presenting a petition will be indicated in the next chapter.

(*t*) See 32 & 33 Vict. c. 71, s. 6, *ante*, p. 1282—1283.

(*u*) *Ante*, p. 1298.



## BOOK VI.

### THE JURISDICTION AND PRACTICE IN BANKRUPTCY.

#### CHAPTER VI.

##### THE PETITION FOR ADJUDICATION.

ASSUMING that an act of bankruptcy has been committed by a debtor, either by non-compliance with a debtor summons as described in the last chapter (*a*), or in one of the other modes mentioned in the chapter treating of the parties by and against whom bankruptcy proceedings may be taken (*b*), the next step will be to present a petition for the adjudication of the debtor as a bankrupt. In all cases, however, the only way to obtain an adjudication in bankruptcy is by the issue of a petition for that purpose.

Every bankruptcy petition must be accompanied by an affidavit verifying the statements contained therein. On this subject, "The Bankruptcy Act, 1869," provides as follows:—

"Every bankruptcy petition shall be accompanied by an affidavit of the petition in the prescribed form, verifying the statement contained in such petition."—32 & 33 Vict. c. 71, s. 80, sub-sect. 1 (*c*).

When the petitioner cannot himself verify all the statements contained in the petition, he must procure the affidavit of some one who can depose to such statements (*d*). On this subject, "The Bankruptcy Rules, 1870," provide as follows:—

"When the petitioning creditor cannot himself verify all the statements contained in the petition, he must file in support of the petition the affidavit of any person who can depose to them."—"The Bankruptcy Rules, 1870," r. 29.

Where there are two or more petitioners, each must file a separate affidavit, or a joint affidavit must be made by the two deponents. This is provided by the following rule of "The Bankruptcy Rules, 1870":—

"Where a petition is presented by two or more creditors

Petition in all cases necessary to obtain an adjudication of bankruptcy.

Petition must be supported by affidavit.

Every bankruptcy petition to be accompanied by affidavit of verification.

*The Bankruptcy Act, 1869, s. 80, sub-s. (1).*

—By whom affidavit must be made of facts not within petitioner's knowledge.

When petitioner cannot himself depose to all the statements in petition he must procure another deponent.

*The Bankruptcy Rules, 1870, r. 29.*

If more than one petitioner, separate affidavits or a

(*a*) *Ante*, p. 1300.

(*b*) *Ante*, cap. iii. of this Book, p. 1279 *et seq.*

(*c*) See this section set out in full, *ante*, p. 1258—1260.

(*d*) See *Ex parte Bennock*, 21 L. T. N. S. 625.

joint affidavit must be filed.

*The Bankruptcy Rules, 1870, r. 30.*

Forms of affidavit.

Statements contained in petition to be investigated by the registrar before sealing copies for service.

*The Bankruptcy Rules, 1870, r. 32.*

How petition to be prepared.

*The Bankruptcy Rules, 1870, r. 27.*

"not in partnership, each creditor must depose to the truth of such of the statements in the petition as are within his own knowledge, either in a joint or separate affidavit."—"The Bankruptcy Rules, 1870," r. 30.

The form of affidavit of verification in ordinary cases is provided (e). Another form is provided for use where the affidavit is by several petitioners (f).

In order to prevent a person from being harassed by bankruptcy proceedings instituted without want of care or from malicious motives, the registrar, before sealing the petition, is required to investigate carefully the statements contained therein. On this subject, "The Bankruptcy Rules, 1870," provide as follows :—

"After the presentation of the petition, and before sealing the copies of the petition for service, the statements in the petition shall be carefully investigated, and where some of the statements in the petition cannot be sworn to, witnesses may be summoned to prove the same."—"The Bankruptcy Rules, 1870," r. 32.

With reference to the petition in bankruptcy, "The Bankruptcy Rules, 1870," provide as follows :—

"Every petition shall be fairly written or printed, or partly written and partly printed, on parchment or paper according to the form in the schedule, and no alterations, interlineations, or erasures shall be permitted without leave of the registrar, except so far as the same may be necessary in order to adapt the printed form to the circumstances of the particular case; and every petition must be lodged, with two copies to be sealed and issued to the petitioner."—"The Bankruptcy Rules, 1870," r. 27.

“creditors’ trustee; and the Court shall make order for the payment of such costs out of the first net proceeds of the estate of the bankrupt.”—“The Bankruptcy Rules, 1870,” r. 31. *The Bankruptcy Rules, 1870, r. 31.*

The registrar, where a petitioning creditor is not known to him, will not file the petition until satisfied as to his identity. On this subject, “The Bankruptcy Rules, 1870,” provide as follows :—

“Where a petitioning creditor is not known to the registrar of the Court, or the petition shall not be attested by an attorney, the petition shall not be filed until the petitioner shall be identified to the satisfaction of the registrar.”—“The Bankruptcy Rules, 1870,” r. 28. *If registrar do not know petitioner, he must be identified before petition will be filed, unless petition attested by a solicitor.*

The registrar being satisfied that the statements in the petition are *bonâ fide* (k), will seal it (l).

Thirdly, as to the service of the petition.

It is directed by a section in “The Bankruptcy Act, 1869,” that every bankruptcy petition shall be “served in the prescribed manner” (m). *The Bankruptcy Rules, 1870, r. 28.* *Service of the petition.*

The person upon whom service is to be effected and within what time is specified by the following rule of “The Bankruptcy Rules, 1870” :— *Bankruptcy petition to be personally served.*

“A bankruptcy petition shall be personally served seven days before the day of its hearing by delivering to the debtor a sealed copy of the filed petition.”—“The Bankruptcy Rules, 1870,” r. 60. *The Bankruptcy Rules, 1870, r. 60.*

The above rule, it is to be noticed, requires that the petition be *personally* served. Where, however, this provision cannot be complied with, the course indicated by the following rule of “The Bankruptcy Rules, 1870,” should be followed :— *The service of a debtor’s summons or of a petition where present service cannot be effected.*

“A debtor’s summons or a petition shall be served upon the debtor by an officer or a bailiff of the Court or by the creditor or his attorney; but if personal service cannot be effected, the Court may grant extension of the time for service, or if the Court is satisfied by affidavit that the debtor is keeping out of the way to avoid such service, it may order service to be made by delivery of the summons or petition to some adult inmate at his usual or last known place of residence or business, or it may order, in the case of a summons, that a notice of the granting of the summons, according to the form in the schedule (n), be gazetted, and that the publication of such notice in the *Gazette* shall be deemed to be service on the debtor on the seventh day after such publication; or in the case of a petition, the Court may order that a notice, according to the form in the schedule, be gazetted, requiring

(k) Rule 32, *ante*, p. 1302.

(l) Rule 10, *ante*, p. 1265.

(m) 32 & 33 Vict. c. 71, s. 8, *post*, p. 1324.

(n) Rule 58, *ante*, p. 1272.

"the debtor to appear at the hearing of the petition on the day named, being not less than fourteen days after the publication of the notice, and that such notice shall be deemed to be served on the debtor."—"The Bankruptcy Rules, 1870," r. 61.

Form of notice for substituted service.

A form of notice in *Gazette* where substituted service of a debtor's summons is directed, is provided (o). And also a form of notice in *Gazette* where substituted service of a petition is ordered (p).

Notice of order as to substituted service to be published in local paper.

The following rule of "The Bankruptcy Rules, 1870," relates to the publication of similar notices in one local paper :—

*The Bankruptcy Rules, 1870, r. 62:*

"Notice of the publication in the *Gazette* of the order of the Court shall be given in one local paper, according to the form in the schedule" (q).—"The Bankruptcy Rules, 1870," r. 62.

Extension of time for service.

As regards extension of time for service, "The Bankruptcy Rules, 1870," provide :—

Application for extension of time of service to be in writing.

"An application for extension of time for service of a debtor's summons or a petition shall be in writing, and need not be supported by affidavit, unless in any case the Court shall otherwise require."—"The Bankruptcy Rules, 1870," r. 64.

*The Bankruptcy Rules, 1870, r. 64.*

With reference to service on a debtor who is out of England, "The Bankruptcy Rules, 1870," provide :—

Service where debtor is out of England.

"Where a debtor petitioned against is not in England, the Court upon such evidence as shall satisfy it that the service will be effectual or sufficient, may order service to be made within such time and in such manner and form as it shall deem fit."—"The Bankruptcy Rules, 1870," r. 66.

*The Bankruptcy Rules, 1870, r. 66.*

With reference to service, where there are several respondents, "The Bankruptcy Rules, 1870," provide that :—

"tached and filed in Court forthwith after the service."—"The Bankruptcy Rules, 1870," r. 63.

Where copies of the petition for adjudication were sealed (s) by the registrar before the actual filing of the affidavit of the service of a debtor's summons, it was held that the adjudication was not in consequence invalidated (t). For the rules on this subject are merely directory (u).

Copies of petition may be filed before affidavit of service made.

Facilities are likewise afforded for the arrest of the debtor after (a) the *presentation* of a bankruptcy petition, or (b) after *service* of a bankruptcy petition. The provision on the subject is contained in the following section of "The Bankruptcy Act, 1869," which is so very explicit, as not to require any explanatory remarks :—

Arrest of a debtor against whom petition presented.

"The Court may, by warrant (x) addressed to any constable or prescribed officer of the Court, cause a debtor to be arrested, and any books, papers, monies, goods, and chattels in his possession to be seized, and him and them to be safely kept as prescribed until such time as the Court may order, under the following circumstances :—

When the debtor may be arrested after presentation of a petition.

*The Bankruptcy Act, 1869, s. 86.*

"(1.) If, after a petition of bankruptcy is presented against such debtor, it appear to the Court that there is probable reason for believing that he is about to go abroad or to quit his place of residence with a view of avoiding service of the petition or of avoiding appearing to the petition, or of avoiding examination in respect of his affairs, or otherwise delaying or embarrassing the proceedings in bankruptcy :

"(2.) If, after a petition in bankruptcy has been presented against such debtor, it appear to the Court that there is probable cause for believing that he is about to remove his goods or chattels with a view of preventing or delaying such goods or chattels being taken possession of by the trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods or chattels, or any books, documents, or writings which might be of use to his creditors in the course of his bankruptcy :

"(3.) If after the service of the petition on such debtor, or after an adjudication in bankruptcy against him, he remove any goods or chattels in his possession above the value of five pounds,

(s) In accordance with rule 27, *supra*, p. 1302.

(t) *Ex parte Hunt; In re Hunt*, L. R. 8 Ch. 238.

(u) *Ibid.*

(x) For form of warrant, see Appendix V. Form No. 73.

“without the leave of the trustee, or if, without  
 “good cause shown, he fails to attend any ex-  
 “amination ordered by the Court.”—32 & 33  
 “Vict. c. 71, s. 86.

How bankrupt  
 to be dealt  
 with after  
 arrest.

*The Bank-  
 ruptcy Rules,*  
 1870, r. 177.

“The Bankruptcy Rules, 1870,” provide that :—

“Where a bankrupt is arrested under a warrant issued  
 “under section 86 of the Act, he shall be safely kept by being  
 “lodged within the prison, to the keeper of which the warrant  
 “is, amongst others, addressed ; and any books, papers, monies,  
 “goods, and chattels in the possession of the bankrupt, which  
 “may be seized, shall be lodged with the trustee of the property  
 “of the bankrupt forthwith ” (y).—“The Bankruptcy Rules,  
 1870,” r. 177.

As regards the power of the Court to arrest or imprison, it is  
 to be noticed, that “The Debtors Act, 1869” (32 & 33 Vict.  
 c. 62), which abolishes imprisonment for debt in certain cases,  
 enacts that, “Nothing in this part of the Act shall in any way  
 “affect any right or power, under the ‘Bankruptcy Act, 1869,’  
 “to arrest or imprison any person ” (z).

Where arrest  
 may take  
 place.

As regards the places in which a warrant of a Bankruptcy  
 Court may be enforced, in another chapter (a) it has been  
 pointed out that it may be enforced, not only in England,  
 but also anywhere “in Her Majesty’s dominions,” in the same  
 manner and subject to the same privileges as a warrant issued  
 by a justice of the peace against a person for an indictable  
 offence (b).

Proceedings  
 by debtor to  
 resist peti-  
 tion.

“The Bankruptcy Act, 1869 ” (32 & 33 Vict. c. 71), enables  
 a debtor to show cause against a bankruptcy petition.

Debtor in-  
 tending to

When, however, this is the intention of the debtor, he must  
 file a notice to that effect and transmit same, by post, to the  
 petitioning creditor, as appears from the following rule of “The

debt ; the registrar refused to permit this, however, and made an adjudication. It was held that the debtor ought to have been allowed to adduce his evidence, and that the adjudication must be annulled, but that the debtor must pay the costs occasioned by the omission to give the notice (e).

4

(e) *In re Dale ; Ex parte Dale*, 3 Ch. D. 322.

## BOOK VI.

### THE JURISDICTION AND PRACTICE IN BANKRUPTCY.

#### CHAPTER VII.

##### INTERLOCUTORY PROCEEDINGS.

Interlocutory proceedings divided into (I.) The general practice on interlocutory proceedings ; (II.) Interlocutory proceedings to protect property ; (III.) Interlocutory proceedings in aid of the petition.

IN the present chapter it is proposed to consider the various interlocutory proceedings which may take place in bankruptcy—and which usually, and for the most part—occur before the hearing of the petition for adjudication. These, it need hardly be said, are extremely varied. Following, however, in substance, the division adopted in the Book of this work which treats of “The Proceedings in an Ordinary Action,” it will be convenient to separately discuss and consider (I.) The General Practice on Interlocutory Proceedings ; (II.) Interlocutory Proceedings to Protect Property ; and (III.) Interlocutory Proceedings in Aid of the Petition.

##### SECTION I.—THE GENERAL PRACTICE ON INTERLOCUTORY PROCEEDINGS.



order that any matter may be disposed of in open Court instead of in chambers, or adjourned from chambers into the open Court (b).

(2.) As to applications to the Court.

As many interlocutory proceedings consist of applications to the Court, it is convenient to take this opportunity to point out, once and for all, how applications to the Court are usually made. The subject is regulated, in the following way, by "The Bankruptcy Rules, 1870":—

"All applications to the Court in the exercise of its primary jurisdiction (c) by virtue of the Act, shall (unless otherwise provided or the Court shall in any particular case otherwise permit) be by way of motion, supported by affidavit, upon hearing which the Court shall make such order therein as shall be just; but in cases in which any other party or parties than the applicant are to be affected by such order, no such order shall be made, unless upon the consent of such person or persons duly shown to the Court; or upon proof that notice of the intended motion and copy of the affidavit in support thereof has been served upon the party or parties to be affected thereby four clear days at least before the day named in such notice as the day when the motion is to be made: provided, however, that the Court may, if it shall think fit, in any case where the party or parties to be affected by the order, or any of them, shall not have been duly served with a notice of the motion for such order, make an order calling upon the party or parties to be affected thereby to show cause, at a day to be named by the Court in such order, why such order should not be made."—"The Bankruptcy Rules, 1870," r. 50.

The above section, it is to be noted, provides that a Court will not make an order in an *ex parte* motion "*in cases in which any other party or parties than the applicant are to be affected by such order,*" (a) unless upon the consent of such person or persons duly shown to the Court; or (b) upon proof that notice of the intended motion and copy of the affidavit in support thereof has been served upon the party or parties to be affected thereby *four clear days at least before the day named in such notice as the day when the motion is to be made*: provided, however, that if no such notice of motion has been given as aforesaid the Court may, if it shall think fit, make an order calling upon the party or parties to show cause why the order should not be made. This order to show cause must be *served* as is provided by the following rules of "The Bankruptcy Rules, 1870":—

(b) Rule 6, *ante*, p. 1266.

(c) These words, "primary jurisdiction," are taken from "The Bankruptcy Act, 1849." Some discussion as to their meaning took place in the case of *Ex parte Webster*; *Re Ginn*, 50 L. T. 83.

(2.) Applications in Court.  
—General mode of taking.

Applications to the Court to be by motion.  
*The Bankruptcy Rules, 1870, r. 50.*

Every order to show cause to be served upon the party to be affected by it.

*The Bankruptcy Rules, 1870, r. 51.*

How personal service of notice of motion, &c., effected.

*The Bankruptcy Rules, 1870, r. 52.*

Substituted service of notices.

*The Bankruptcy Rules, 1870, r. 53.*

Note of every motion to be delivered to registrar before public sitting of Court.

*The Bankruptcy Rules, 1870, r. 56.*

"Every order to show cause shall be served upon the party or parties to be affected thereby four clear days at the least before the day appointed for showing cause."—"The Bankruptcy Rules, 1870," r. 51.

"In cases in which personal service of any notice of motion, or of any rule or order of the Court, is required, the same shall be effected, in the case of a notice of motion, by delivering at any time to the party or parties to be served, and each of them, a duplicate of the notice of motion; and in the case of a rule or order by delivering to the party or parties to be served, and each of them, a sealed copy of the order or rule."—"The Bankruptcy Rules, 1870," r. 52.

"Notices of which substituted service may be made (otherwise than by post or advertisement) shall be served between the hours of eight o'clock in the forenoon and nine o'clock in the afternoon."—"The Bankruptcy Rules, 1870," r. 53.

Whenever a motion is going to be made to the Court a short note thereof must be previously delivered to the registrar in accordance with the following rule of "The Bankruptcy Rules, 1870" :—

"A short note of every motion shall be delivered to the registrar previous to the public sitting of the Court, specifying the bankruptcy or other matter to which the same relates, the name of the party on whose behalf the same is made, the name and residence of the attorney of such party and of the counsel, if the same be made by counsel, and the name of any party, and the name and residence of his attorney, on whom any notice of such motion has been served."—"The Bankruptcy Rules, 1870," r. 56.

The order of hearing motions is dealt with by the following rule of "The Bankruptcy Rules, 1870" :—

"Except in cases of emergency all motions shall be made and

"approval, and shall, when approved, be signed by the Judge and filed, and shall be called the Record for Trial; but the Court shall have power to allow any amendment thereof at any time upon such terms as it may think fit."—"The Bankruptcy Rules, 1870," r. 190.

"Upon filing the record with the registrar within three days after the above approval has been given, the registrar shall fix the time and place at which the trial shall be had."—"The Bankruptcy Rules, 1870," r. 191.

"Upon every such trial in the London Bankruptcy Court the addresses to the jury or to the Court, as the case may be, shall be regulated as follows:—The party who begins, or his counsel or attorney, shall be allowed, in the event of his opponent not announcing at the close of the case of the party who begins, his intention to adduce evidence, to address the jury a second time at the close of such case, for the purpose of summing up the evidence; and the party on the other side, or his counsel, shall be allowed to open the case, and also to sum up the evidence (if any); and the right to reply shall be the same as at present in force in the superior Courts of common law at Westminster on trials at Nisi Prius."—"The Bankruptcy Rules, 1870," r. 201(f).

"Where the jury retire from the Court to consider their verdict, they shall be taken charge of by an officer of the Court; but previously thereto the registrar of the Court shall swear such officer according to the form in the schedule."—"The Bankruptcy Rules, 1870," r. 202.

"The verdict or finding of the jury, as the case may be, shall be endorsed by the registrar on the Record for Trial, and with the jury panel and the names of the jurors, who were sworn, endorsed thereon."—"The Bankruptcy Rules, 1870," r. 203.

Secondly, the *mode* of making interlocutory applications having been pointed out, it remains to consider the provisions in force as to *affidavits*, which are the evidence usually employed in support of such applications.

It will be convenient to treat (1) of the preparation of affidavits; (2) of the swearing of affidavits; and (3) of the filing of affidavits.

(1.) As to the *preparation* of affidavits.

"The Bankruptcy Rules, 1870," provide as follows:—

"All affidavits to be used in evidence on motions to the Court shall be divided into short paragraphs, numbered consecutively, and shall be in the first person."—"The Bankruptcy Rules, 1870," r. 151(g).

(f) It is submitted that though this rule professes to apply to the London Bankruptcy Court only, that the practice there laid down is equally applicable to the County Courts.

(g) An affidavit commencing "*I say*," instead of "*I make oath and say*," will be rejected: *Allen v. Taylor*, 22 L. T. N. S. 512.

Time and place of trial to be fixed by registrar.

*The Bankruptcy Rules*, 1870, r. 191.

Regulation of addresses to the jury.

*The Bankruptcy Rules*, 1870, r. 201.

Treatment of jury when they retire to consider their verdict.

*The Bankruptcy Rules*, 1870, r. 202.

Verdict of jury to be endorsed on record.

*The Bankruptcy Rules*, 1870, r. 203.

(II.) Affidavits.

(1.) Preparation of affidavits.

Affidavits to be divided into paragraphs.

*The Bankruptcy Rules*, 1870, r. 151.

And to state deponent's name, address, and description, and what facts are within deponent's knowledge.

*The Bankruptcy Rules, 1870, r. 152.*

Mode of making affidavits where there are several deponents.

*The Bankruptcy Rules, 1870, r. 153.*

Affidavit not in accordance with three preceding rules may be rejected.

*The Bankruptcy Rules, 1870, r. 154.*

Effect of unauthenticated alterations in affidavits.

*The Bankruptcy Rules, 1870, r. 155.*

"Every such affidavit shall state the deponent's name, address, and description, and also what facts or circumstances deposed to are within his knowledge."—"The Bankruptcy Rules, 1870," r. 152.

"Where any such affidavit is made by more than one person, the names of all the persons making the affidavit, and the dates when and the places where it is sworn, shall be inserted in the jurat."—"The Bankruptcy Rules, 1870," r. 153.

"Any such affidavit not in conformity with the last three preceding rules may be rejected by the Court."—"The Bankruptcy Rules, 1870," r. 154.

"An affidavit in which there is any erasure, or which is blotted so as to obliterate any word, or which is illegibly written, or so altered as to cause it to be illegible, or in which there is any interlineation, not duly authenticated by the person before whom it was sworn, may be rejected by the Court."—"The Bankruptcy Rules, 1870," r. 155.

(2.) As to the *swearing* of affidavits, "The Bankruptcy Rules, 1870," provide as follows:—

"Where an affidavit is made by any person who is blind, or who from his signature or otherwise appears to be illiterate, the person before whom the affidavit is sworn shall state in the jurat that the affidavit was read over to the deponent, and that the deponent appeared to understand the same, and made his mark or wrote his signature thereto in the presence of the person before whom the affidavit is sworn."—"The Bankruptcy Rules, 1870," r. 156.

"Any affidavit used in any matter of bankruptcy may be sworn as follows:—

"(1.) In the United Kingdom, before a Court having jurisdiction in bankruptcy or a Judge thereof

(3.) As to the *filing* of affidavits, the following rules of "The Bankruptcy Rules, 1870," relate to the filing of affidavits:—

"Every affidavit to be used in obtaining, supporting, or opposing any motion or order for showing cause for or against any order or rule of Court, shall be filed with the registrar two days before the day appointed for the hearing; and no affidavit in reply or in rejoinder is to be used except by leave of the Court."—"The Bankruptcy Rules, 1870," r. 54.

"The registrar, upon any affidavit being left with him to be filed, shall indorse the same with the day of the month and year when the same was so left, and forthwith file the same, with the proceedings to which the same relates, and any affidavit left with a registrar to be filed, shall on no account be delivered to any person whatever, except by order of the Court"(h).—"The Bankruptcy Rules, 1870," r. 55.

(3.) Filing of affidavits.

Every affidavit to be filed with registrar two days before hearing.

*The Bankruptcy Rules, 1870, r. 54.*

Registrar to take charge of affidavits left to be filed and to indorse them.

*The Bankruptcy Rules, 1870, r. 55.*

## SECTION II.—INTERLOCUTORY PROCEEDINGS FOR THE PROTECTION OF PROPERTY OR RIGHTS.

There are three different kinds of proceedings in bankruptcy for the protection of property or rights. And these are (a.) the restraint of legal proceedings; (b.) the stay of bankruptcy proceedings; and (c.) the appointment of a receiver or a manager.

Three classes of proceedings to protect property or rights.

### (a.) *The Restraint of Legal Proceedings.*

By "The Bankruptcy Act, 1869," it is enacted as follows:—

"The Court may, at any time after the presentation of a bankruptcy petition against the debtor, restrain further proceedings in any action, suit, execution, or order legal process against the debtor in respect of any debt provable in bankruptcy, or it may allow such proceedings, whether in progress at the commencement of the bankruptcy or commenced during its continuance, to proceed upon such terms as the Court may think just. The Court may also, at any time after the presentation of such petition, appoint a receiver or manager of the property or business of the debtor against whom the petition is presented, or of any part thereof, and may direct immediate possession to be taken of such property or business, or any part thereof."—32 & 33 Vict. c. 71, s. 13.

After presentation of bankruptcy petition Court may restrain legal proceedings against debtor.

*The Bankruptcy Act, 1869, s. 13.*

The Court will not grant an injunction under this section unless and until a receiver or manager of the debtor's property has been appointed (i).

(h) As to obtaining office copies of affidavits, see *ante*, p. 1270 rule 12.

(i) *Re Robinson*, 22 L. T. N. S. 247.

The application should be supported by an affidavit stating the precise nature of the debts over which it is proposed the injunction should extend (*k*). And it seems that notice of the intended application should be given to the persons sought to be restrained (*l*).

It seems that the above section (section 13) has no application to a case where there has been a *complete* adjudication, and where there is before the Court a trustee in bankruptcy who could be plaintiff (*m*). It is the absence of a proper plaintiff which renders necessary the special powers given by the 13th section, and it does not reduce the extent of the jurisdiction given by the subsequent clauses of the Act (*n*). It is in fact a distinct enactment standing by itself for the mere purpose of preserving the property until there is an adjudication and a person before the Court who can stand in the position of plaintiff (*o*).

Where an injunction is obtained *ex parte*, an undertaking as to damages, in an unqualified form, should be given (*p*).

The Court will, under section 13, after the presentation of a petition, interfere for the purpose of restraining a sale of the bankrupt's property by the sheriff, although the sheriff was in possession *prior* to the bankruptcy (*q*).

A form of order restraining actions, &c., is provided (*r*).

(*b.*) *Stay of Bankruptcy Proceedings (s).*

When bankruptcy proceedings will be stayed.

"The Bankruptcy Act, 1869," enacts that:—

"The Court may, at any time, on proof to its satisfaction that proceedings in bankruptcy ought to be stayed, by reason that negotiations are pending for the liquidation of the affairs

Where a petition for adjudication was presented after ample time had been allowed for arrangement, and when the day for hearing arrived, a petition for liquidation was presented by the debtor not supplemented by evidence that a single creditor preferred liquidation to bankruptcy, the Court refused to interfere with the creditor's seeking his remedy in bankruptcy by staying proceedings on the petition (*t*).

(*c*.) *Appointment of a Receiver or Manager.*

"The Bankruptcy Act, 1869," provides as follows:—

"The Court may also, at any time after the presentation of such petition, appoint a receiver or manager of the property or business of the debtor against whom the petition is presented, or of any part thereof, and may direct immediate possession to be taken of such property or business, or any part thereof."—32 & 33 Vict. c. 71, s. 13 (*u*).

The Court may after petition presented, appoint a receiver or manager of debtor's property.

As already pointed out (*x*) section 13 has no application to a case where there has been a complete adjudication. Accordingly, the Court will not appoint a receiver after adjudication (*y*) though before the appointment of a trustee in bankruptcy (*z*).

*The Bankruptcy Act, 1869, s. 13.*

The Court will, if necessary, restrain actions brought against the receiver (*a*).

Though no particular qualification is necessary in the case of a receiver, yet he should undoubtedly be a person wholly disinterested in the property of the bankrupt (*b*).

Qualification of receiver.

The following rule of "The Bankruptcy Rules, 1870," regulates the mode of application for a receiver or manager:—

Mode of applying for a receiver or manager.

"After the presentation of a petition, upon the application of a creditor and upon proof by affidavit of sufficient grounds for the appointment of a receiver or manager of the property, or business of the debtor, or any part thereof, the Court may, if he think fit, make such appointment; and where the petition is dismissed the creditor shall pay such costs of the receiver or manager as the Court may direct, and the Court shall, if required, adjudicate with respect to any damages or claim thereto arising out of his appointment, or make such order thereon as it thinks fit, and such order shall be final and conclusive between the parties, and between them or either of them and the receiver or manager, unless the de-

*The Bankruptcy Rules, 1870, r. 39.*

(*t*) *Ex parte Dimond; In re Williams*, L. R. 5 Ch. App. 743; S. C. 39 L. J. Bank. 47.

(*u*) This section is set out in full, *ante*, p. 1313.

(*x*) *Ante*, p. 1314.

(*y*) *Re Crouchurst*, 14 Sol. Jour. 219.

(*z*) See *post*, p. 1359, as to appointment of trustee in bankruptcy.

(*a*) *Ex parte Betts; In re Figula*, 22 L. T. N. S. 245.

(*b*) See *Re Keilor*, 50 L. T. 11; *Lee on Bankruptcy*, p. 68.

Remuneration  
of receivers or  
managers.

Receiver or  
manager to  
have no lien  
for his remuneration on  
any of debtor's  
money or  
property.

*The Bankruptcy Rules,*  
1871, r. 3.

Remuneration  
of receiver or  
manager who  
is continued  
as trustee.

*The Bankruptcy Rules,*  
1871, r. 6.

Remuneration  
of receiver or  
manager who  
is not continued  
as trustee.

*The Bankruptcy Rules,*  
1871, r. 7.

Duties of  
receivers.

Receiver or  
manager on  
appointment  
of trustee to  
submit his ac-

cision be appealed from."—"The Bankruptcy Rules, 1870," r. 39.

A form of affidavit in support of an application for a receiver is provided (c).

The "Bankruptcy Rules, 1871," provide as follows with regard to the remuneration of receivers :—

"A receiver or manager, in cases either of bankruptcy or liquidation, shall not have any lien whatever for his remuneration on any money or property which may have come into his hands."—"The Bankruptcy Rules, 1871," r. 3.

"Where in bankruptcy or liquidation a receiver or manager is continued as trustee, the remuneration of trustee at the rate determined on shall commence as from the date of his appointment as receiver or manager, and shall be assessed accordingly; and no other than the aforesaid remuneration shall be made to the trustee for his services as receiver or manager."—"The Bankruptcy Rules, 1871," r. 6.

"Where the receiver or manager is not continued as trustee, or is continued as trustee but without remuneration, he shall be allowed out of the estate such sum for his services as receiver or manager as the taxing officer of the Court shall, having regard to the views of the trustee, and committee of inspection (if any) thereon, think fit."—"The Bankruptcy Rules, 1871," r. 7.

With regard to the duties of receiver, "The Bankruptcy Rules, 1870," provide as follows :—

"Upon the appointment of a creditor's trustee, any receiver or manager of the property or business of the bankrupt shall submit his accounts for examination to such trustee, and for that purpose attend on the trustee, at such reasonable times as he may require" (d).—"The Bankruptcy Rules, 1870."



"All bills and charges of attorneys, receivers, managers, accountants, auctioneers, brokers, and other persons not being trustees, in matters of bankruptcy, shall be taxed by the proper officer of the Court, and no payments in respect of such bills or charges shall be allowed by the comptroller, in the accounts of a trustee, without due proof of such taxation having been made. The taxing officer shall satisfy himself that the employment of a solicitor has been duly authorised by section 29 of the Act."—"The Bankruptcy Rules, 1871," r. 4.

*Taxation of costs of receivers and others.*

All bills and charges of receiver, manager, and others to be taxed.

*The Bankruptcy Rules, 1871, r. 4.*

Trustee not to pay bills which have not been taxed.

*The Bankruptcy Rules, 1871, r. 5.*

"All bills and charges of attorneys, receivers, managers, accountants, auctioneers, brokers, and other persons not being trustees, in matters of liquidation, shall be taxed by the proper officer of the Court, and no payment in respect of such bills or charges shall be allowed in the accounts of a trustee without due proof of such taxation having been made. No payment shall be allowed in respect of the remuneration of a trustee in liquidation, except on the allocatur of the taxing officer, as being in accordance with the determination of the creditors thereon."—"The Bankruptcy Rules, 1871," r. 5.

### SECTION III.—INTERLOCUTORY PROCEEDINGS IN AID OF THE PETITION ITSELF.

The interlocutory proceedings to which recourse may be had in aid of a petition are exceedingly various. These, however, for the most part, resemble the corresponding interlocutory proceedings in an ordinary action (e). The following short remarks will suffice to explain each of them.

*Varied nature of interlocutory proceedings in aid of a petition.*

#### (a.) *Giving Security.*

"The Bankruptcy Act, 1869," provides for the giving of security in certain cases, some of which have been already specified. "The Bankruptcy Rules, 1870," regulate, by the following rules, the mode of giving security when required:—

*Security to be by bond.*

*The Bankruptcy Rules, 1870, r. 158.*

"Where a person is required to give security, such security shall be in the form of a bond with one or more surety or sureties to the person proposed to be secured."—"The Bankruptcy Rules, 1870," r. 158.

"The bond of any person other than a trustee shall be taken in a penal sum to the amount of double the sum in question up to the sum of £1000; and where the sum in question exceeds £1000, in the sum of £1000 beyond such

*Amount of bond.*

*The Bankruptcy Rules, 1870, r. 159.*

(e) *Ante*, Book II. cap. xi. p. 376 *et seq.*

"sum, unless, in either case, the opposite party consents to it being taken for a less sum."—"The Bankruptcy Rules, 1870," r. 159.

Deposit in lieu of security.

*The Bankruptcy Rules, 1870, r. 160.*

"Where a person is required to give security he may, in lieu thereof, deposit with the registrar a sum equal to the sum in question in respect of which security is to be given and the probable costs of the trial of the question, together with a memorandum to be approved of by the registrar and to be signed by such person, his attorney, or agent, setting forth the conditions on which the money is deposited."—"The Bankruptcy Rules, 1870," r. 160 (g).

Security of guarantee association may be given.

*The Bankruptcy Rules, 1870, r. 161.*

"The security of a Guarantee Association or Society may be given in lieu of a bond or a deposit."—"The Bankruptcy Rules, 1870," r. 161.

Practice in regard to security by bond.

*The Bankruptcy Rules, 1870, r. 162.*

Sureties to make affidavit of sufficiency.

*The Bankruptcy Rules, 1870, r. 163.*

How bond to be executed and attested.

"In all cases where a person proposes to give a bond by way of security, he shall serve, by post or otherwise, on the opposite party and on the Registrar, at his office, notice of the proposed sureties according to the form set forth in the schedule, and the registrar shall forthwith give notice to both parties of the time and place at which he proposes that the bond shall be executed, and shall state in the notice, that should the proposed obligee have any valid objection to make to the sureties, or either of them, it must then be made."—"The Bankruptcy Rules, 1870," r. 162.

"The sureties shall make an affidavit of their sufficiency according to the form in the schedule, unless the opposite party shall dispense with such affidavit, and such sureties shall attend the Court to be cross-examined if required."—"The Bankruptcy Rules, 1870," r. 163.

"The bond shall be executed and attested in the presence of the registrar, or before a justice of the peace, or an attorney."

take the whole or any part of the evidence in any matter either *visà voce* or by interrogatories, or upon affidavit, or by commission abroad (i).

The mode of administering interrogatories, and also the manner of taking evidence on commission, and the practice relating thereto, have been fully entered into in a previous part of (k) this treatise.

(c.) *Application for Examination of Witness in Scotland or Ireland.*

“The Bankruptcy Act, 1869,” provides as follows :—

“Any Court having jurisdiction in bankruptcy in England under this Act may, if it thinks fit, order that a person named in the order being in Scotland or in Ireland shall be examined there.”—32 & 33 Vict. c. 71, s. 75.

Order for examination of person in Scotland or Ireland.

*The Bankruptcy Act, 1869, s. 75.*

It is to be observed that this provision is confined to cases where the witness is in Scotland or in Ireland. But should he happen to be elsewhere, out of the United Kingdom, application should then be made for a commission abroad (m).

(d.) *Amendments.*

“The Bankruptcy Act, 1869,” provides as follows :—

“No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to such proceeding is of opinion that substantial injustice has been caused by such defect or irregularity, and that such injustice cannot be remedied by any order of such Court.”—32 & 33 Vict. c. 71, s. 82.

Effect of formal defect or irregularity in bankruptcy proceedings.

*The Bankruptcy Act, 1869, s. 82.*

With a view to give effect to the above enactment, “The Bankruptcy Rules, 1870,” provide as follows with regard to amendments :—

The Court may allow amendments to be made.

“In any proceeding before the Court, the Court may allow any amendments which in the judgment of the Court or registrar ought to be allowed on such terms as may be ordered.”—“The Bankruptcy Rules, 1870,” r. 208.

*The Bankruptcy Rules, 1870, r. 208.*

It has recently been held that a bankruptcy petition against a trader which alleges, as an act of bankruptcy, that he has departed from his dwelling-house, or otherwise absented himself, must allege that he did so with intent to defeat or delay his creditors, otherwise the petition will be demurrable, and

(i) Rule 49, *post*, pp. 1324—1325.

(k) Book II. cap. xi. sect. vi. pp. 394—404.

(m) “Bankruptcy Rules, 1870,” r. 49, cited *post*, pp. 1324—1325.

must be dismissed (*mm*). Such a defect, moreover, is a matter of substance, not a merely formal defect, and it cannot be cured by amendment (*mm*).

(*e.*) *Proceedings on Death of Debtor before Adjudication.*

We shall presently have occasion to point out that the death of the debtor *after* adjudication does not necessarily put an end to the proceedings (*n*). But where the death occurs before adjudication, the proceedings are thereby determined (*o*). However, where one of two or more debtors dies before adjudication, it seems that application may successfully be made to continue proceedings against the survivor or survivors (*p*).

When the Court will consolidate bankruptcy proceedings. *The Bankruptcy Act, 1869, s. 80, sub-s. (2).*

(*f.*) *The Consolidation of two or more Bankruptcy Petitions.*

“The Bankruptcy Act, 1869,” provides as follows :—

“Where two or more bankruptcy petitions are presented against the same debtor or against debtors being members of the same partnership, the Court may consolidate the proceedings, or any of them, upon such terms as the Court thinks fit.”—32 & 33 Vict. c. 71, s. 80, ss. (2) (*q*).

(*g.*) *The Substitution of one Creditor for another as Petitioning Creditor.*

The substitution of one creditor as

Where a petitioning creditor does not proceed with due diligence on his petition, he is liable to be displaced from his position, and to have another creditor substituted for him. On

## BOOK VI.

### THE JURISDICTION AND PRACTICE IN BANKRUPTCY.

#### CHAPTER VIII.

##### THE HEARING AND ADJUDICATION.

THE time and place at which a petition is to be heard is fixed by the registrar who gives notice thereof, in accordance with the following rule of "The County Court Rules, 1870" :—

"The registrar shall appoint the time and place on which the petition will be heard, and notice thereof shall be written on the petition and sealed copies, and where the petition has not been served the registrar may from time to time alter the first day so appointed, and appoint another day and hour."—"The Bankruptcy Rules, 1870," r. 34.

As a rule, *seven* days must elapse between the service of the petition and the hearing (*a*). But in two specified cases, namely, (1.) If the act of bankruptcy be that the debtor has absented himself, or, (2.) That he has filed a declaration of inability to pay his debts, the petition may be heard *forthwith*, instead of allowing this interval of time to elapse.

"The Bankruptcy Rules, 1870" provide as follows :—

"Where the act of bankruptcy alleged in a petition to have been committed by the debtor is that the debtor, being a trader, has departed from his dwelling-house, or otherwise absented himself, the petition may be heard forthwith on a sealed copy of the petition being left at the usual or last known place of residence or business of the debtor."—"The Bankruptcy Rules, 1870," r. 65.

"Where a petition is presented and the act of bankruptcy stated to have been committed is that the debtor has filed in the Court to which the petition is presented a declaration admitting his inability to pay his debts, the Court may, if the debtor consents in writing thereto, hear and adjudicate upon the petition forthwith."—"The Bankruptcy Rules, 1870," r. 42.

Time and place of hearing.

Registrar to appoint time and place of hearing petition.

*The Bankruptcy Rules, 1870, r. 34.*

Seven days' interval between service of petition and hearing.

When debtor has departed from his dwelling-house or otherwise absented himself, and this is alleged in petition, the petition may be heard forthwith.

*The Bankruptcy Rules, 1870, r. 65.*

Where debtor has filed declaration of inability to pay debts, petition may be heard forthwith.

*The Bankruptcy Rules, 1870, r. 42.*

(a) *Ante*, p. 1303, rule 60.

Personal attendance of petitioner and his witnesses at hearing may be dispensed with.

*The Bankruptcy Rules, 1870, r. 40.*

Mode of appearance.

Creditor neglecting to appear on petition, cannot present another without leave of Court.

*The Bankruptcy Rules, 1870, r. 39.*

If debtor fail to appear, he may be adjudicated bankrupt without further proof.

*The Bankruptcy Rules, 1870, r. 37.*

As regards the *attendance* of the parties at the hearing, "The Bankruptcy Rules, 1870," provide as follows :—

"The personal attendance of the petitioning creditor and of the witness or witnesses to prove the debt, the trading, and act of bankruptcy, upon the hearing of the petition, may, if the Court shall think fit, be dispensed with."—"The Bankruptcy Rules, 1870," r. 40.

The above rule, it will be noticed, does not enable the Court to dispense with the personal attendance of the *debtor*.

As regards the *mode* of appearance of the parties it may be in person or by counsel or solicitor.

It sometimes happens that one or other of the parties fails to appear upon the hearing of the petition. The absence of the petitioning creditor, where his personal attendance has not been disposed with (*b*), is dealt with by the following rule of "The Bankruptcy Rules, 1870" :—

"If any creditor shall neglect to appear on his petition, no subsequent petition against the same debtor or debtors, or any of them, either alone or jointly with any other person or persons, shall be presented by the same creditor without the special leave of the Court to which the previous petition was presented."—"The Bankruptcy Rules, 1870," r. 39 (*c*).

The non-appearance by the debtor at the hearing exposes him to an adjudication without further proof of the statements in the petition, "The Bankruptcy Rules, 1870," providing as follows on the subject :—

"If the debtor does not appear at the hearing, the Court may make adjudication without further proof of the statements in the petition, if it shall think fit."—"The Bankruptcy Rules, 1870," r. 37 (*d*).

It was at one time a matter of doubt whether, in the event

"or after adjudication, shall be issued by the Court at the instance of a trustee, a creditor, a debtor, or any respondent in any matter, with or without a clause requiring the production of books, deeds, papers, and writings in his possession or control, and in such *subpœna* the name of only one witness shall be inserted. A *subpœna* may be issued in blank as at common law."—"The Bankruptcy Rules, 1870," r. 166.

*The Bankruptcy Rules, 1870, r. 166.*

"A sealed copy of the *subpœna* shall be served personally on the witness by the person at whose instance the same is issued, or by his attorney, or by an officer of the Court, within a reasonable time before the time of the return thereof."—"The Bankruptcy Rules, 1870," r. 167.

Service of *subpœna*.

*The Bankruptcy Rules, 1870, r. 167.*

"Service of the *subpœna* shall, where required, be proved by affidavit."—"The Bankruptcy Rules, 1870," r. 168.

Proof of service.

The form of *subpœna* on ordinary summons is provided (*g*). So, too, is a form of summons under section 96 (*h*).

*The Bankruptcy Rules, 1870, r. 168.*

Let us now see before whom the hearing takes place. The petition may be taken (1.) By the Judge, or (2.) By the registrar, where this duty is delegated to him by the Judge (*i*). It is presumed that in no case can the petition be heard by a Judge and jury. For it is submitted that the provision (*k*) as to this mode of trial in bankruptcy cases does not apply to hearing for adjudication.

Tribunal to hear the case.

We will now notice the course of procedure after the parties have appeared at the hearing.

Proceedings on hearing.

It sometimes happens that two or more petitions are presented to the same Court against the same debtor, or against debtors being members of the same partnership (*l*). In such cases, the question which petition shall be heard first? is disposed of by the following rule of "The Bankruptcy Rules, 1870":—

Order in which several petitions are to be heard.

*The Bankruptcy Rules, 1870, r. 48.*

"Where two or more petitions are presented to the same Court against the same debtor, or against debtors being members of the same partnership, the petition which was first presented shall be first heard; and where such first petition shall not have been served, or where the debtor shows cause against the petition, or where delay will be avoided, any other petition which has been served may be heard, and if the Court make adjudication thereon, the Court shall, after the expiration of the time allowed for appeal against the adjudication, dismiss all the other petitions

(*g*) Appendix V. Form 75. A trustee may be summoned for examination, see *Ex parte Crossley*; *Re Taylor*, L. R. 13 Eq. 408; and see also *Ex parte Swift*; *Re Russell*, 26 L. T. N. S. 226.

(*h*) Appendix V. Form 76. For sect. 96 of the Act, see *post*, pp. 1374—1375.

(*i*) "Bankruptcy Act, 1869," s. 67, *ante*, p. 1269, and rule 3, *ante*, p. 1269.

(*k*) "Bankruptcy Act, 1869," s. 72, *ante*, p. 1257.

(*l*) It has already been pointed out, that in such cases, the petitions may be consolidated. "Bankruptcy Act, 1869," sect. 80, par. 2, *ante*, p. 1320.

“upon such terms as to costs as it shall deem just.”—“The Bankruptcy Rules, 1870,” r. 48.

Evidence  
required in  
support of the  
petition.

Assuming the hearing to follow the usual course, and that the debtor appears to show cause against the petition, let us see what proof must be given by the petitioning creditor.

*The Bank-  
ruptcy Act,  
1869, s. 8.*

On this subject “The Bankruptcy Act, 1869,” provides as follows :—

“A petition praying that a debtor may be adjudged a bankrupt, in this Act referred to as a bankruptcy petition, shall be served in the prescribed manner (*m*). At the hearing the Court shall require proof of the debt of the petitioning creditor, and of the trading, if necessary, and of the Act of bankruptcy, or, if more than one act of bankruptcy is alleged in the petition, of some one of the alleged acts of bankruptcy, and if satisfied with such proof, shall adjudge the debtor to be bankrupt. The Court may adjourn the petition, either conditionally or unconditionally, for the procurement of further evidence or for any other just cause, or may dismiss the petition, with or without costs, as the Court think just.”—32 & 33 Vict. c. 71, s. 8.

Proof must be  
given of such  
matters as  
debtor has  
given notice  
that he in-  
tends to  
dispute.

*The Bank-  
ruptcy Rules,  
1870, r. 38.*

“The Bankruptcy Rules, 1870,” further provide as follows :—

“On the appearance of the debtor to show cause against the petition, the petitioning creditor’s debt, trading, and act of bankruptcy, or such of those matters as the debtor shall have given notice that he intends to dispute, shall again be proved, and if any new evidence of those matters, or any of them, shall be given, or any witness or witnesses to such matter shall not be present for cross-examination, and further time shall be desired to show cause, the Court shall, if it think the application reasonable, grant such further time as it may



"as evidence of the matters therein deposed to."—32 & 33 Vict. c. 71, s. 108.

Certain instruments are receivable in evidence in all legal proceedings whatever. On this subject "The Bankruptcy Act, 1869," provides as follows :—

"Any petition or copy of a petition in bankruptcy, any order or copy of an order made by any Court having jurisdiction in bankruptcy, any certificate or copy of a certificate made by any Court having jurisdiction in bankruptcy, any deed or copy of a deed of arrangement in bankruptcy, and any other instrument or copy of an instrument, affidavit, or document made or used in the course of any bankruptcy proceedings, or other proceedings had under this Act, may, if any such instrument as aforesaid or copy of an instrument appears to be sealed with the seal of any Court having jurisdiction, or purports to be signed by any Judge having jurisdiction in bankruptcy under this Act, be receivable in evidence in all legal proceedings whatever."—32 & 33 Vict. c. 71, s. 107.

On the day fixed for the hearing of the petition in bankruptcy, the Court may either (1.) Adjourn the case ; (2.) Make an order staying the proceedings ; (3.) Make an order dismissing the petition ; or (4.) Make an order for the adjudication of the debtor as a bankrupt.

(1.) It has been seen (*n*) that the Court may adjourn the hearing of the petition, either conditionally or unconditionally, for the procurement of further evidence or for any other just cause.

A form of order for adjournment of petition is provided (*o*).

(2.) As to the stay of proceedings on the petition.

It sometimes happens that the petition is not heard on the merits on the day fixed for the hearing, but that proceedings therein are stayed, at the instance of the debtor, in order that the question as to whether the debtor is indebted as alleged, may be duly tried. The following are the provisions on this subject :—

"The Bankruptcy Act, 1869," provides as follows :—

"Where the debtor appears on the petition, and denies that he is indebted to the petitioner or that he is indebted to such amount as would justify the petitioner in presenting a bankruptcy petition against him, the Court, upon such security (if any) being given as the Court may require for payment to the petitioner of any debt which may be established against him in due course of law, and of the costs of establishing such debt, may stay all proceedings on the petition for such time as may be required for trial of the question relating to such debt, and such trial shall be had in manner herein-

Certain documents sealed by a Bankruptcy Court to be received in evidence in all legal proceedings whatever.

*The Bankruptcy Act, 1869, s. 107.*

What course may be adopted by the Court on the hearing of a bankruptcy petition.

(1.) The Court may adjourn the hearing of the petition.

(2.) Proceedings on the petition may be stayed.

Where debtor appears at hearing and denies the existence of a sufficient debt. Court will stay proceedings if sufficient security be given.

*The Bankruptcy Act, 1869, s. 9.*

(*n*) *Ante*, p. 1324.

(*o*) Appendix V. Form No. 25.

“ before provided with respect to disputed debts under debtor’s  
“ summonses.

“ Where proceedings are stayed the Court may, if by reason  
“ of the delay caused by such stay of proceedings or for any  
“ other cause it thinks just, adjudge the debtor a bankrupt on  
“ the petition of some other creditor, and shall thereupon  
“ dismiss, upon such terms as it thinks just, the petition pro-  
“ ceedings in which have been stayed as aforesaid.”—32 & 33  
Vict. c. 71, s. 9.

A form of order to stay proceedings on petition is provided (*p*). Also forms of bond on stay of such proceedings (*q*), of notice of sureties (*r*), and of affidavit of justification (*s*).

It is to be noticed that the section just cited provides that where proceedings on a petition has been stayed under it, the Court may adjudge the debtor a bankrupt on the petition of some other creditor, and shall thereupon dismiss the petition proceedings in which have been stayed as aforesaid. A special form of dismissal applicable to such cases is provided (*t*).

“ The Bankruptcy Rules, 1870,” provide as follows :—

Course to be  
pursued by  
petitioning  
creditor where  
validity of his  
debt has been  
established  
after stay of  
proceedings for  
that purpose.

*The Bank-  
ruptcy Rules,  
1870, s. 42.*

“ Where proceedings on a petition have been stayed for the  
“ trial of the question of the validity of the petitioning credi-  
“ tor’s debt, and such question has been decided in favour of  
“ the validity of the debt, the petitioning creditor may apply  
“ to the registrar to fix a day on which further proceedings on  
“ the petition may be had, and the registrar on production of  
“ the judgment of the Court in which the question was tried,  
“ or an office copy thereof, shall give notice to the petitioner  
“ by post of the time and place fixed for the hearing of the  
“ petition, and a like notice to the debtor at the address given  
“ in his notice to dispute.”—“ The Bankruptcy Rules, 1870,”

"Where proceedings on a petition are stayed upon security being given, the creditor shall take or continue proceedings for the payment of the debt within twenty-one days of the date on which the security was completed, and shall prosecute the same with effect and without delay, and if he fail so to do the debtor shall be entitled to have the petition dismissed with costs."—"The Bankruptcy Rules, 1870," r. 47.

The Court may also stay proceedings on the petition, where negotiations are pending for liquidation by arrangement or composition (u).

(3.) The Court may also dismiss the petition, with or without costs (x).

A form of order for the dismissal of a petition is provided (y).

Where there are more respondents than one to a petition, the Court may dismiss the petition as to one or more of them, it being provided by "The Bankruptcy Act, 1869," as follows:—

"Where there are more respondents than one to a petition, the Court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them."—32 & 33 Vict. c. 71, s. 101.

(4.) At the hearing, the Court may at once proceed to adjudication.

Where an adjudication takes place, publicity has to be given to it. On this subject, "The Bankruptcy Act, 1869," enacts:—

"A copy of an order of the Court adjudging the debtor to be bankrupt (z) shall be published in the *London Gazette*, and be advertised locally in such manner (if any) as may be prescribed, and the date of such order shall be the date of the adjudication for the purposes of this Act, and the production of a copy of the *Gazette* containing such order as aforesaid shall be conclusive evidence in all legal proceedings of the debtor having been duly adjudged a bankrupt, and of the date of the adjudication" (a).—32 & 33 Vict. c. 71, s. 10.

(u) Sect. 80, sub-sect. 10, *ante*, p. 1314.

(x) See *ante*, p. 1324, sect. 8.

(y) Appendix V. Form No. 23. For Form of Order for Dismissal of Petition upon which proceedings have been stayed where adjudication has been made on a subsequent petition, see Appendix V. Form No. 24, and see *ante*, p. 1323—1324.

(z) Appendix V. Form of Order of Adjudication, No. 26.

(a) "The Bankruptcy Rules, 1870," provide as follows with reference to advertisements in the *London Gazette*:—

"In lieu of attaching a copy of the *London Gazette* to the proceedings in each bankruptcy or other matter, the registrar shall file with the proceedings the page of the gazette in which the advertisement occurs, and in case of an advertisement in a local paper, he shall file the advertisement with a memorandum of the name of the paper and date of its publication; and for this purpose one copy of every *London Gazette* and of each local newspaper in

Where proceedings stayed on security given, creditor must prosecute proceedings for payment of debt within twenty-one days of completion of security.

*The Bankruptcy Rules, 1870, r. 47.*

(3.) The Court may dismiss the petition with or without costs.

The petition may be dismissed as to one or more of several respondents.

*The Bankruptcy Act, 1869, s. 101.*

(4.) The Court may proceed to adjudication on the hearing of the petition.

Publication of order of adjudication.

*The Bankruptcy Act, 1869, s. 10.*

Page of *Gazette* in which advertisement occurs and advertisement cut out of local paper to be filed with bankruptcy proceedings in lieu of entire papers.

*The Bankruptcy Rules, 1870, r. 13.*

Notice of making of an order of adjudication to be advertised in one local paper. *The Bankruptcy Rules, 1870, r. 45.*

And “The Bankruptcy Rules, 1870,” provide as follows :—  
“Notice of the making an order of adjudication shall be advertised in one local paper according to the form in the “schedule” (b).—“The Bankruptcy Rules, 1870,” r. 45.

“which any notice in any matter of bankruptcy in such Court is inserted shall be left with the Registrar by the person inserting the notice.”—“The Bankruptcy Rules, 1870,” rule 13.  
(b) Appendix V. Form No. 26.

## BOOK VI.

### THE JURISDICTION AND PROCEEDINGS IN BANKRUPTCY.

#### CHAPTER IX.

##### THE EFFECT OF AN ADJUDICATION IN BANKRUPTCY.

THE consequences of an adjudication in bankruptcy are at once extremely important and extremely serious. To discuss them fully, and in all their details, would be impossible within the limits of any book merely on practice—such as the present Work is. But as regards the practice in bankruptcy, such consequences may conveniently be considered as regards (I.) The effect of adjudication on the property and contracts of the bankrupt; (II.) The effect of adjudication upon the personal position of the bankrupt.

Consequences of an adjudication affect (I.) Property and contracts; and (II.) The bankrupt's personal position.

Before considering the consequences of adjudication, it may be as well to mention that "The Bankruptcy Act, 1869," provides that:—

Effect of debtor dying after adjudication.

"When a debtor who has been adjudicated a bankrupt dies, "the Court may order that the proceedings in the matter be "continued as if he were alive."—32 & 33 Vict. c. 71, s. 80, subsect. (9.) (*bb*).

##### SECTION I.—THE EFFECT OF ADJUDICATION UPON THE PROPERTY AND CONTRACTS OF A BANKRUPT.

Although, until an adjudication is formally pronounced, the debtor is not a bankrupt, still, as soon as this stage of the proceedings has been reached, the bankruptcy relates back to the time of the first act of bankruptcy proved to have been committed by the debtor within twelve months next preceding the order of adjudication. On this subject "The Bankruptcy Act, 1869," provides as follows:—

To what time a bankruptcy relates back.

"The bankruptcy of a debtor shall be deemed to have relation back to and to commence at the time of the act of bankruptcy being completed on which the order is made adjudging "him to be bankrupt; or if the bankrupt is proved to have "committed more acts of bankruptcy than one, to have relation "back to and to commence at the time of the first of the acts

*The Bankruptcy Act 1869, s. 11*

(*bb*) But see *Re Obbard*, 19 W. R. 563; 24 L. T. 145.

"of bankruptcy that may be proved to have been committed by the bankrupt within twelve months next preceding the order of adjudication ; but the bankruptcy shall not relate to any prior act of bankruptcy, unless it be that at the time of committing such prior act the bankrupt was indebted to some creditor or creditors in a sum or sums sufficient to support a petition in bankruptcy, and unless such debt or debts are still remaining due at the time of the adjudication."—32 & 33 Vict. c. 71, s. 11.

On adjudication a bankrupt's property vests in the trustee of his estate.

On a person being adjudicated a bankrupt, his property immediately vests in the trustee of his estate. Until a trustee is appointed, the registrar of the Court is *ex officio* the trustee of the estate, and section 17 of the Act provides that, "immediately upon the adjudication being made, the property of the bankrupt shall vest in the registrar." The creditors at a subsequent stage of the proceedings usually themselves appoint a trustee, and it is by the section first cited (section 17), further provided that, "on the appointment of a trustee the property shall forthwith pass to and vest in the trustee appointed." The following is the text of the section just cited, by which this subject is regulated :—

Until appointment of trustee, the registrar to act as such.

"Until a trustee is appointed the registrar shall be the trustee for the purposes of this Act, and immediately upon the order of adjudication being made the property of the bankrupt shall vest in the registrar. On the appointment of a trustee the property shall forthwith pass to and vest in the trustee appointed (a).

Meaning of expression "trustee."

"The expression 'trustee,' when used in this Act, shall include the person for the time being filling the office of trustee, whether he be the registrar or not ; but when the registrar holds the office of trustee he shall, unless the Court otherwise

*The Bank-*

With regard to the property of the bankrupt, actually divisible amongst the creditors, "The Bankruptcy Act, 1869," enacts that :—

"The property of the bankrupt divisible amongst his creditors, and in this Act referred to as the property of the bankrupt, shall not comprise the following particulars :—

Property which is *not* divisible amongst creditors.

"(1.) Property held by the bankrupt on trust for any other person :

"(2.) The tools (if any) of his trade and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding twenty pounds in the whole :

"But it shall comprise the following particulars :

Property which *is* divisible among creditors.

"(3.) All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him during its continuance :

*The Bankruptcy Act, 1869, s. 15.*

"(4.) The capacity to exercise and to take proceedings for exercising all such powers in or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or during its continuance, except the right of nomination to a vacant ecclesiastical benefice :

"(5.) All goods and chattels being, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt, being a trader, by the consent and permission of the true owner, of which goods and chattels the bankrupt is reputed owner, or of which he has taken upon himself the sale or disposition as owner ; provided that things in action, other than debts due to him in the course of his trade or business, shall not be deemed goods and chattels within the meaning of this clause."—32 & 33 Vict. c. 71, s. 15.

With regard to *trust* property of the bankrupt, "The Bankruptcy Act, 1869," enacts that :—

Effect of bankruptcy on position of bankrupt who is a trustee.  
*The Bankruptcy Act, 1869, s. 117.*

"Where a bankrupt is a trustee within 'The Trustee Act, 1850,' section thirty-two of that Act shall have effect so as to authorize the Court to appoint a new trustee in substitution for the bankrupt (whether voluntarily resigning or not), if it appears to the Court expedient to do so, and all provisions of that Act, and of any other Act relative thereto, shall have effect accordingly."—32 & 33 Vict. c. 71, s. 117.

We shall see in another chapter that the trustee in bankruptcy may disclaim such property of the bankrupt as is of an onerous description (*e*).

Trustee may disclaim onerous property.

Seizure of the property of the bankrupt under warrant of Court.

*The Bankruptcy Act, 1869, s. 99.*

"The Bankruptcy Act, 1869," provides for the seizure of the property of the bankrupt. It enacts that :—

"Any person acting under warrant of the Court may seize any property of the bankrupt divisible amongst his creditors under this Act, and in the bankrupt's custody or possession, or in that of any other person, and with a view to such seizure may break open any house, building, or room of the bankrupt where the bankrupt is supposed to be, or any building or receptacle of the bankrupt where any of his property is supposed to be ; and where the Court is satisfied that there is reason to believe that property of the bankrupt is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search warrant to any constable or prescribed officer of the Court, who may execute the same according to the tenor thereof."—32 & 33 Vict. c. 71, s. 99.

To whom warrant of seizure or search warrant to be issued.

*The Bankruptcy Rules, 1870, r. 176.*

"The Bankruptcy Rules, 1870," provide as follows with regard to the form of the warrant of seizure :—

"A warrant of seizure or a search warrant or any other warrant issued under the provisions of the Act shall be addressed to such officer of the London Court of Bankruptcy, or to such high bailiff of any County Court, whether such County Court has jurisdiction in bankruptcy, or not, as the Court may in each case direct."—"The Bankruptcy Rules, 1870," r. 176.

Form of warrant.

A form of warrant of seizure (*g*), and of a search warrant (*h*) is provided.

Registrar may, before appointment of trustee, dispose of bankrupt's

With regard to perishable property belonging to the debtor and vesting, as aforesaid, in the trustee, "The Bankruptcy Rules, 1870," provide that :—

"After adjudication and before the appointment of a trustee



“aid in administering the property in such manner and on such terms as the creditors direct.”—32 & 33 Vict. c. 71, s. 26.

Moreover, as we shall presently see (i) the trustee, with the consent of the creditors, may make an allowance to the bankrupt, out of his assets, for maintenance or service.

As regards post letters addressed to the bankrupt, “The Bankruptcy Act, 1869,” enacts that :—

“The Court upon the application of the trustee, may from time to time order (j) that, for such time as the Court thinks fit, not exceeding three months from the date of the order of adjudication, post letters addressed to the bankrupt at any place or any of the places mentioned in the order, shall be re-directed, sent, or delivered by the Postmaster General or the officers acting under him, to the trustee, or otherwise as the Court directs, and the same shall be done accordingly.”—32 & 33 Vict. c. 71, s. 85.

Post letters addressed to the bankrupt.

Order as to delivery of bankrupt's letters may be obtained by trustee.

*The Bankruptcy Act, 1869, s. 85.*

We will now notice the effect on the adjudication on contracts, agreements, or settlements, entered into or effected by bankrupts.

Effect of adjudication on contracts, settlements, &c., of bankrupt.

With respect to apprenticeship agreements or indentures, “The Bankruptcy Act, 1869,” enacts that :—

“Where at the time of the presentation of the petition for adjudication any person is apprenticed or is an articulated clerk to the bankrupt, the order of adjudication shall, if either the bankrupt or apprentice or clerk give notice in writing to the trustee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement ; and if any money has been paid by or on behalf of such apprentice or clerk to the bankrupt as a fee, the trustee may, on the application of the apprentice or clerk, or of some person on his behalf, pay such sum as such trustee, subject to an appeal to the Court, thinks reasonable, out of the bankrupt's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the bankrupt under the indenture or articles before the commencement of the bankruptcy, and to the other circumstances of the case.

“Where it appears expedient to a trustee, he may, on the application of any apprentice or articulated clerk to the bankrupt, or any person acting on behalf of such apprentice or articulated clerk, instead of acting under the preceding provisions of this section, transfer the indenture of apprenticeship or articles of agreement to some other person.”—32 & 33 Vict. c. 71, s. 33.

Effect of bankruptcy on apprenticeship agreements and articles of clerkship.

*The Bankruptcy Act, 1869, s. 33.*

(i) See *post*, p. 1338.

(j) Appendix V. Form No. 96.

**Voluntary settlements.**

**Effect of bankruptcy upon voluntary settlements.**

*The Bankruptcy Act, 1869, s. 91.*

With respect to voluntary settlements, "The Bankruptcy Act, 1869," enacts that :—

"Any settlement of property made by a trader not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of such settlement, be void as against the trustee of the bankrupt appointed under this Act, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of such settlement, unless the parties claiming under such settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in such settlement, be void against such trustee. Any covenant or contract made by a trader, in consideration of marriage, for the future settlement upon or for his wife or children, of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent in possession or remainder, and not being money or property of or in right of his wife, shall, upon his becoming bankrupt before such property or money has been actually transferred or paid pursuant to such contract or covenant, be void against his trustee appointed under this Act.

"'Settlement' shall for the purposes of this section include any conveyance or transfer of property."—32 & 33 Vict. c. 71, s. 91.

**Effect of bankruptcy on fraudulent**

With respect to conveyances, transfers, and all transactions in the nature of fraudulent preferences, "The Bankruptcy Act,

“Nothing in this Act contained shall render invalid,—

What transactions with bankrupt are protected.

“(1.) Any payment made in good faith and for value received to any bankrupt before the date of the order of adjudication by a person not having at the time of such payment notice of any act of bankruptcy committed by the bankrupt, and available against him for adjudication :

*The Bankruptcy Act, 1869, s. 94.*

“(2.) Any payment or delivery of money or goods belonging to a bankrupt, made to such bankrupt by a depositary of such money or goods before the date of the order of adjudication, who had not at the time of such payment or delivery notice of any act of bankruptcy committed by the bankrupt, and available against him for adjudication :

“(3.) Any contract or dealing with any bankrupt, made in good faith and for valuable consideration, before the date of the order of adjudication, by a person not having, at the time of making such contract or dealing, notice of any act of bankruptcy committed by the bankrupt, and available against him for adjudication.”—  
32 & 33 Vict. c. 71, s. 94.

“Subject and without prejudice to the provisions of this Act relating to the proceeds of the sale and seizure of goods of a trader, and to the provisions of this Act avoiding certain settlements, and avoiding, on the ground of their constituting fraudulent preferences, certain conveyances, charges, payments, and judicial proceedings, the following transactions by and in relation to the property of a bankrupt shall be valid, notwithstanding any prior act of bankruptcy :

Protection of certain transactions entered into by and in relation to the property of the bankrupt.  
*The Bankruptcy Act, 1869, s. 95.*

“(1.) Any disposition or contract with respect to the disposition of property by conveyance, transfer, charge, delivery of goods, payment of money, or otherwise howsoever made by any bankrupt in good faith and for valuable consideration, before the date of the order of adjudication, with any person not having at the time of the making of such disposition of property notice of any act of bankruptcy committed by the bankrupt, and available against him for adjudication :

“(2.) Any execution or attachment against the land of the bankrupt, executed in good faith by seizure before the date of the order of adjudication, if the person on whose account such execution or attachment was issued had not at the time of the same being so executed by seizure

“ notice of any act of bankruptcy committed by  
 “ the bankrupt, and available against him for  
 “ adjudication :

“(3.) Any execution or attachment against the goods of  
 “ any bankrupt, executed in good faith by  
 “ seizure and sale before the date of the order of  
 “ adjudication, if the person on whose account  
 “ such execution or attachment was issued had  
 “ not at the time of the same being executed  
 “ by seizure and sale notice of any act of bank-  
 “ ruptcy committed by the bankrupt and avail-  
 “ able against him for adjudication.”—32 & 33  
 Vict. c. 71, s. 95.

Effect of bank-  
 ruptcy on  
 contracts of  
 tenancy.

Leasehold property of the bankrupt vests in the trustee, consequently the effect of bankruptcy is to place the trustee in the position of tenant in the place of the bankrupt. However, as we shall see in another chapter, the trustee may execute a disclaimer of leasehold property belonging to the bankrupt with the consent of the Court (*k*).

Effect of ad-  
 judication is  
 to confine a  
 landlord's  
 right of dis-  
 tress to one  
 year's arrears  
 of rent.

With reference to the landlord's power of distress, “The Bankruptcy Act, 1869,” enacts that :—

“ The landlord or other person to whom any rent is due  
 “ from the bankrupt may at any time, either before or after the  
 “ commencement of the bankruptcy, distrain upon the goods or  
 “ effects of the bankrupt for the rent due to him from the  
 “ bankrupt, with this limitation, that if such distress for rent  
 “ be levied after the commencement of the bankruptcy it shall  
 “ be available only for one year's rent accrued due prior to the  
 “ date of the order of adjudication, but the landlord or other  
 “ person to whom the rent may be due from the bankrupt may  
 “ prove under the bankruptcy for the overplus due for which

"tors, administrators, or assigns; and every such bankrupt shall be entitled to recover the remainder, if any, of the debts due to him; but such surplus shall not be paid until all the creditors who have proved shall have received interest upon their debts to be calculated and paid at the rate and in the order following, viz., all creditors whose debts are by law entitled to carry interest in the event of a surplus shall first receive interest on such debts at the rate of interest reserved or by law payable or provable thereon, to be calculated from the date of the order of adjudication; and after such interest shall have been paid, all other creditors who have proved shall receive interest on their debts from such date at the rate of four pounds per centum per annum."—"The Bankruptcy Rules, 1870," r. 137.

In what order interest or debts is to be paid.

*The Bankruptcy Rules, 1870, r. 137.*

## SECTION II.—THE EFFECT OF AN ADJUDICATION UPON THE PERSONAL POSITION OF A BANKRUPT.

The effect of an adjudication upon the personal position of a bankrupt, is twofold. Upon the one hand it confers upon him protection against all legal proceedings. Upon the other hand it creates certain obligations, and imposes certain disqualifications on the bankrupt.

First, as regards the protection and privileges which an adjudication confers upon a bankrupt.

We have seen, on the one hand, that the property of the bankrupt is taken from him and transferred to the registrar as temporary trustee, as soon as adjudication has been pronounced. But, on the other hand, protection is afforded him against the claims of his creditors. For "The Bankruptcy Act, 1869," enacts that:—

"Where a debtor shall be adjudicated a bankrupt, no creditor to whom the bankrupt is indebted in respect of any debt provable in the bankruptcy shall have any remedy against the property or person of the bankrupt in respect of such debt except in manner directed by this Act. But this section shall not affect the power of any creditor holding a security upon the property of the bankrupt to realize or otherwise deal with such security in the same manner as he would have been entitled to realize or deal with the same if this section had not been passed."—32 & 33 Vict. c. 71, s. 12.

"The Bankruptcy Act, 1869," enacts that:—

"Where a bankrupt is a contractor in respect of any contract jointly with any other person or persons, such person or persons may sue or be sued in respect of such contract, without the joinder of the bankrupt."—32 & 33 Vict. c. 71, s. 112.

Effect of adjudication on the bankrupt is (1.) To confer protection and (2.) To impose duties and disqualifications.

—Protection and privileges of a bankrupt.

Protection afforded to bankrupt himself against legal proceedings.

Proviso as to secured creditors.

*The Bankruptcy Act, 1869, s. 12.* Saving as to joint contracts. When one of several joint contractors becomes bankrupt, the rest may be sued without his being joined as defendant. *The Bankruptcy Act, 1869, s. 112.*

Allowance may with creditor's consent be made by trustee to the bankrupt for maintenance or service.  
*The Bankruptcy Act, 1869, s. 38.*

Duties and obligations imposed on bankrupt.  
 Bankrupt bound to assist the trustee.

In order that the bankrupt, who is, as already explained, deprived of his property by adjudication, may not be left in want, "The Bankruptcy Act, 1869," provides that :—

"The trustee, with the consent of the creditors, testified by a resolution passed in general meeting, may from time to time during the continuance of the bankruptcy, make such allowance as may be approved by the creditors to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding up his estate."—32 & 33 Vict. c. 71, s. 38.

Secondly, we may briefly consider the duties and obligations imposed on the bankrupt by the adjudication.

"The Bankruptcy Act, 1869," enacts that :—

"The bankrupt shall, to the utmost of his power, aid in the realization of his property, and the distribution of the proceeds amongst his creditors. He shall produce a statement of his affairs to the first meeting of creditors, and shall be publicly examined thereon on a day to be named by the Court (*m*), and subject to such adjourned public examination as the Court may direct. He shall give such inventory of his property, such list of his creditors, and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such meetings of his creditors, wait at such times on the trustee, execute such powers of attorney, conveyances, deeds, and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the trustee, or may be prescribed by rules of Court, or be directed by the Court by any special order or orders made in reference

notice is provided (*o*). And there is likewise a form of application by the trustee (*p*). The application itself must be supported by affidavit, in the form given in the schedule (*q*). In the schedule of forms is also to be found a form of an order of committal under this section (*r*), of a warrant of committal (*s*), and of an order for discharge from custody (*t*).

The effect of adjudication on persons having privilege of Parliament, is as follows:—

As regards peers, or any other lord of Parliament, it is sufficient to observe that “The Bankruptcy Disqualification Act, 1871,” provides that every peer who becomes a bankrupt shall be disqualified from sitting or voting in the House of Lords, or in any committee thereof: and further, if a peer of Scotland or Ireland, shall be disqualified from being elected to sit and vote in the House of Lords (*u*). The Act also provides for the restitution of a peer to his privileges on the determination of the bankruptcy (*x*).

With regard to members of the House of Commons, the provisions of “The Bankruptcy Act, 1869,” on this subject are set forth in the footnote (*y*).

Effect of adjudication on persons having privilege of Parliament.

—Peers.

—Members of House of Commons.

- (*o*) Appendix V. Form No. 87.
- (*p*) Appendix V. Form No. 83.
- (*q*) Appendix V. Form No. 84.
- (*r*) Appendix V. Form No. 90.
- (*s*) Appendix V. Form No. 93.
- (*t*) Appendix V. Form No. 94.
- (*u*) 34 & 35 Vict. c. 50, s. 2.
- (*x*) 34 & 35 Vict. c. 50, s. 4.
- (*y*) “If a person, being a member of the Commons House of Parliament, is adjudged bankrupt, he shall be and remain during one year from the date of the order of adjudication incapable of sitting and voting in that House, unless within that time either the order is annulled or the creditors who prove debts under the bankruptcy are fully paid or satisfied.
- “Provided that such debts (if any) as are disputed by the bankrupt shall be considered, for the purpose of this section, as paid or satisfied if within the time aforesaid he enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning such debts, together with any costs to be given in such proceedings.—32 & 33 Vict. c. 71, s. 121.
- “If within the time aforesaid the order of adjudication is not annulled, and the debts of the bankrupt are not fully paid or satisfied as aforesaid, then the Court shall, immediately after the expiration of that time, certify the same to the Speaker of the House of Commons, and thereupon the seat of such member shall be vacant.—32 & 33 Vict. c. 71, s. 122.
- “Where the seat of a member so becomes vacant the Speaker during a recess of the House, whether by prorogation or by adjournment, shall forthwith, after receiving such certificate, cause notice thereof to be published in the *London Gazette*; and after the expiration of six days after such publication shall (unless the house has met before that day, or will meet on the day of the issue,) issue his warrant to the clerk of the Crown to make out a new writ for electing another member in the room of the member whose seat has so become vacant.—32 & 33 Vict. c. 71, s. 123.
- “The powers of the Act of the twenty-fourth year of the reign of King George the Third, chapter twenty-six, to repeal so much of two Acts made in the tenth and fifteenth years of the reign of his present Majesty as authorizes the Speaker of the House of Commons to issue his warrant to the clerk of the Crown for making out writs for the election of members to serve in

Member of House of Commons on becoming a bankrupt vacates his seat for one year. *The Bankruptcy Act, 1869, s. 121.* Within certain time the seat of bankrupt member to become permanently vacant. *The Bankruptcy Act, 1869, s. 122.* Speaker will then issue new writ. *The Bankruptcy Act, 1869, s. 123.*

Effect of adjudication on position of justices of peace.

*The Debtors Act,*  
1869, s. 22.

The effect of adjudication on persons who are Justices of the Peace, is as follows.

“The Debtor's Act, 1869,” provides as follow :—

“If any person being assigned by Her Majesty's Commission to act as a Justice of the Peace is adjudged bankrupt, or makes any arrangement or composition with his creditors under ‘The Bankruptcy Act, 1869,’ he shall be and remain incapable of acting as a Justice of the Peace until he has been newly assigned by Her Majesty in that behalf.”—32 & 33 Vict. c. 62, s. 22.

Provisions of 24 Geo. III. s. 2, c. 26, extended to case of bankruptcy.

*The Bankruptcy Act,*  
1869, s. 124.

“Parliament in the manner therein mentioned; and for substituting other ‘provisions for the like purposes,’ so far as such powers enable the Speaker to nominate and appoint other persons, being members of the House of Commons, to issue warrants for the making out of new writs during the vacancy of the office of Speaker or during his absence out of the realm, shall extend to enable him to make the like nomination and appointment for issuing warrants, under the like circumstances and conditions, for the election of a member in the room of any bankrupt member whose seat becomes vacant under this Act.”—32 & 33 Vict. c. 71, s. 124.



## BOOK VI.

### THE JURISDICTION AND PRACTICE IN BANKRUPTCY.

#### CHAPTER X.

##### THE FIRST MEETING OF CREDITORS.

So soon as a debtor is adjudicated a bankrupt a first meeting of his creditors is immediately summoned. "The Bankruptcy Rules, 1870," provide as follows, with regard to the summoning of a first meeting of creditors :—

Summoning of first meeting of creditors.

"The first meeting of creditors shall be summoned immediately after making an order of adjudication, by the registrar appointing a day for the first meeting of creditors and by giving ten days' notice thereof in the *London Gazette* and in one local paper according to the form in the schedule."—"The Bankruptcy Rules, 1870," r. 89.

*The Bankruptcy Rules, 1870, r. 89.*

This rule is in accordance with section 14 of "The Bankruptcy Act, 1869," which it is more convenient to set out later on (a).

A form of notice convening a first meeting of creditors is provided (b).

Form of summons calling meeting.

With reference to the *place* of meeting, it is usual to hold it in the town where the Court is in the habit of holding its sittings.

Place of meeting.

If it be desired to hold it elsewhere, special application must be made. On this subject "The Bankruptcy Rules, 1870," provide as follows :—

Application to appoint special place of meeting.

"If the petitioning creditor or any other creditor desire that the first meeting of creditors should be held at any other town than the town where the Court usually holds its sittings, application, supported by affidavit showing grounds for the application, must be made at the hearing of the petition. If such application be by any other person than the petitioning creditor, two days' notice thereof must be given to the petitioning creditor, and if the Court be reasonably satisfied that

*The Bankruptcy Rules, 1870, r. 87.*

(a) *Post*, pp. 1359—1360.

(b) Appendix V. Form No. 27 ; and end of Form No. 26.

"the circumstances of the estate and of the creditors require that the application should be granted, the same shall be granted accordingly." — "The Bankruptcy Rules, 1870, r. 87.

With every such application deposit to be made.  
*The Bankruptcy Rules, 1870, r. 88.*

"With every such application for a meeting to be held elsewhere than in the London Court of Bankruptcy, or in the town in which the County Court holds its sittings, there shall be deposited in the office of the registrar the sum of three pounds to defray the reasonable expenses of the registrar and of his clerk in attending such meeting, to be afterwards allowed to the applicant out of the estate by the trustee" (c). — "The Bankruptcy Rules, 1870," r. 88.

Regulations as to first meeting of creditors.

*The Bankruptcy Act, 1869, s. 16.*

As regards the *mode* of conducting proceedings at the first meeting, "The Bankruptcy Act, 1869," contains the following provision on the subject, which it is desirable to set out in this place :—

"The general meeting of creditors to be summoned as aforesaid by the Court, and in this Act referred to as the first meeting of creditors, shall be held in the prescribed manner and subject to the prescribed regulations as to the quorum, adjournment of meeting, and all other matters relating to the conduct of the meeting or the proceedings thereat.

"Provided that,—

"1. The meeting shall be presided over by the registrar, or in the event of his being unable to attend through illness or any unavoidable cause, by such chairman as the meeting may elect :

"2. A person shall not be entitled to vote as a creditor unless at or previously to the meeting he has in the prescribed manner proved a debt provable under the bankruptcy to be due to him (d) :

"(d) A creditor shall not vote at the said meeting unless he has proved a debt provable under the bankruptcy to be due to him (d) :

- "5. A 'secured creditor' shall in this Act mean any  
 "creditor holding any mortgage, charge, or lien on  
 "the bankrupt's estate, or any part thereof, as  
 "security for a debt due to him :  
 "6. Votes may be given either personally or by proxy :  
 "7. An ordinary resolution shall be decided by a majority  
 "in value of the creditors present personally or by  
 "proxy at the meeting and voting on such resolu-  
 "tion :  
 "8. A special resolution shall be decided by a majority in  
 "number, and three-fourths in value, of the credi-  
 "tors present personally or by proxy at the meeting  
 "and voting on such resolution."—32 & 33 Vict.  
 c. 71, s. 16.

As at the first meeting nothing can be done without voting, a few preliminary observations on this subject seem to be called for.

Votes at first meeting of creditors.

It is to be noticed that this section deals with the *right* to vote as well as with the *mode* of voting. Now the *right* to vote depends upon the right to *prove* against the bankrupt's estate. The right to *prove* will be discussed later on in a separate chapter devoted to that extensive subject. But it may be convenient to state at once that if one partner of a firm is adjudged bankrupt any creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors (*e*).

As regards the *mode* of voting, it may be either *personally* or by *proxy* (*f*). It is, moreover, provided by "The Bankruptcy Act, 1869," as follows :—

"A creditor may, in the prescribed manner, by instrument  
 "in writing, appoint a person to represent him in all matters  
 "relating to any debtor or his affairs in which a creditor is  
 "concerned in pursuance of this Act, and such representa-  
 "tive shall thereupon, for all the purposes of this Act, stand  
 "in the same position as the creditor who appointed him."  
 —32 & 33 Vict. c. 71, s. 80, sub-s. (8) (*g*).

As regards the *form* of the instrument appointing a proxy, "The Bankruptcy Rules, 1870," provide that :—

"The instrument appointing a proxy shall be in writing  
 "under the hand of the creditor, or if such creditor is a  
 "corporation or company under the hand of an agent stating  
 "that he is duly authorized on its behalf ; and such instrument  
 "shall be according to the form in the schedule, and shall,  
 "unless it is expressly stated otherwise therein, be deemed

Mode of voting.

By instrument in writing a creditor may appoint a representative in bankruptcy proceedings.

*The Bankruptcy Act, 1869, s. 80, sub-s. (8).*

Form of appointment of proxy.

Form and effect of instrument appointing a proxy.

(*e*) 32 & 33 Vict. c. 71, s. 103, *post*, p. 1354.

(*f*) *Id.*, sect. 16, sub-s. (6), *supra*.

(*g*) See this section set out in full, *ante*, pp. 1258—1260.

*The Bankruptcy Rules, 1870, r. 85.*

“and allowed as an authority to the appointee of the creditor to vote for him and on his behalf at all meetings of creditors in the matter, or adjournments thereof, and generally to act for the creditor in all other matters under the Act, of whatsoever kind, as fully as the creditor himself could act.”—“The Bankruptcy Rules, 1870,” r. 85.

As regards the proxy it may be added to the proof (*h*). But a special form of proxy (when not added to proof) is also provided (*i*).

When instrument of proxy to be produced.

*The Bankruptcy Rules, 1870, r. 86.*

“The instrument must be produced at the first meeting at which the proxy attends and be filed.”—“The Bankruptcy Rules, 1870,” r. 86.

What number of creditors shall form a quorum.

Saving certain exceptions, nothing can be done at a meeting in the absence of a quorum.

*The Bankruptcy Rules, 1870, r. 93.*

Minutes and report of proceedings, and taking down

What number of creditors shall form a *quorum*, is regulated by the following rule of “The Bankruptcy Rules, 1870” :—

“A meeting of creditors shall not be competent to act for any purpose under the Act (except the election of a chairman, the proving of debts, and the adjournment of the meeting), unless there are present or represented thereat a quorum of at least three, or all the creditors if their number does not exceed three” (*k*).—“The Bankruptcy Rules, 1870,” r. 93.

It will have been noticed that section 16 of “The Bankruptcy Act, 1869,” speaks of two classes of resolutions, namely, *ordinary* and *special*. But in other sections of the Act, “resolution” is spoken of without any prefix distinguishing which kind is meant. It seems, however, that whenever in the Act a *special* resolution is not in terms ordained, it is to be assumed that an *ordinary* resolution is intended (*l*).

“The Bankruptcy Act, 1869,” enacts that :—

“The registrar, or any other person presiding at a meeting of creditors under this Act, shall cause minutes (*m*) to be kept and duly entered in a book of all resolutions and pro-

“at first meeting of creditors, a memorandum of order of discharge, and of order annulling adjudication, or of closing bankruptcy, and shall supply the comptroller with such special information, or statistical returns, as he may from time to time require.”—“The Bankruptcy Rules, 1870,” r. 11.

*The Bankruptcy Rules, 1870, r. 11.*

Sometimes, in addition to the ordinary minutes and report of proceedings, which are always taken by the president of the meeting, the Court makes an order that a person be specially appointed to take down the evidence of the bankrupt or of any witness examined at any public sitting or private meeting under the Act. On this subject “The Bankruptcy Rules, 1870,” provide as follows;—

The Court may appoint a person to take down evidence.

*The Bankruptcy Rules, 1870, r. 207.*

“If the Court shall in any case be of opinion that it would be desirable that a person should be appointed to take down the evidence of the bankrupt, or of any witness examined at any public sitting or private meeting under the Act, in shorthand or otherwise, it shall be competent for the Court to make such an appointment; and every person so appointed shall be paid a sum not exceeding one guinea per day, and where the Court appoints a shorthand writer a sum not exceeding eightpence per folio of ninety words of any transcript of the evidence that may be required, and such sums shall be paid by the party at whose instance the appointment was made, or out of the estate, as may be directed by the Court.”—“The Bankruptcy Rules, 1870,” r. 207.

As regards the *adjournment* of the first meeting, “The Bankruptcy Act, 1869,” enacts that:—

Adjournment of meeting.

“The registrar may adjourn the first meeting of creditors from time to time and from place to place, subject to the directions of the Court; but if, at such first meeting of creditors or at some adjournment thereof, no trustee is appointed by reason of the prescribed quorum not being present, or for any other reason whatever, the Court may annul the adjudication, unless it deems it expedient to carry on the bankruptcy with the aid of the registrar as trustee. Moreover, if at any time during the bankruptcy no new trustee is appointed to fill a vacancy in that office, the Court may either carry on the bankruptcy with the aid of the registrar as trustee or annul the order of adjudication, as it thinks just.”—32 & 33 Vict. c. 71, s. 84.

Registrar may adjourn first meeting from time to time and from place to place, subject to directions of Court.

*The Bankruptcy Act, 1869, s. 84.*

“The Bankruptcy Rules, 1870,” on the same subject provide as follows:—

And first meeting to be adjourned if, after prescribed interval, a quorum do not attend.

“Where within half an hour from the time appointed for the first meeting, a quorum of creditors is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the registrar or chairman may appoint, not being less than seven or more than twenty-one days; and if the meeting adjourned is the first meeting of credi-

*The Bankruptcy Rules, 1870, r. 94.*

"tors, or a meeting called to fill up a vacancy in the office of trustee, and a quorum is not present or represented at the adjourned meeting, the registrar shall report the fact to the Court for its decision under section 84 of the Act." — "The Bankruptcy Rules, 1870," r. 94.

**Business usually transacted at first meeting of creditors.**

The following business is usually transacted at the first meeting of creditors: (1.) The proof of debts; (2.) The appointment of a trustee in bankruptcy; (3.) The appointment of a committee of inspection; (4.) The production by the bankrupt of his statement of affairs; and (5.) The appointment of the bankrupt's public examination. We will deal with each of these heads, of business to be transacted, separately.

(1.) *Proof of debts.*

(1.) A creditor may, if he pleases, and for the purpose of enabling him to vote it is often desirable that he should do so, prove his debt at the first meeting of creditors. The mode of proof will be found described in the next chapter (*n*).

(2.) *The appointment of a trustee in bankruptcy.*

(2.) The appointment of a trustee in bankruptcy.

It will be convenient to consider in the next chapter but one, which relates exclusively to the trustee in bankruptcy, the appointment of this official. Suffice it, therefore, to state in this place that a trustee must be elected by the creditors at the first meeting, or some adjournment thereof, otherwise the adjudication may be annulled (*o*).

(3.) *Appointment of committee of inspection.*  
—Statutory directions as to committee

(3.) Next, as to the appointment of a committee of inspection.

The same section of the Act (*p*) which directs the appointment of a trustee in bankruptcy, at the first meeting of creditors, also provides for the appointment of a committee of inspection. It enacts that:—

" . . . . For the purpose of effecting such division, the Court shall, as soon as may be, summon a general meeting of

required to be "fit persons not exceeding five in number, and "being creditors qualified to vote at such first meeting of "creditors as is in this Act mentioned, or authorised in the "prescribed form by creditors so qualified to vote" (g).

"The Bankruptcy Act, 1869," contains the following regulations applicable to committees of inspection, which it is desirable to set out in this place : (r)—

Regulations as to proceedings of committee of inspection.

Regulations applicable to committee of inspection.

*The Bankruptcy Act, 1869, s. 83, sub-ss. (10) to (17).*

"(10.) Any member of the committee of inspection may "resign his office by notice in writing signed by "him, and delivered to the trustee :

"(11.) The creditors may by resolution fix the quorum "required to be present at a meeting of the "committee of inspection :

"(12.) Any member of the committee of inspection may "also be removed by a special resolution at any "meeting of creditors of which the prescribed "notice has been given, stating the object of the "meeting :

"(13.) On any vacancy occurring in the office of a mem- "ber of the committee of inspection by removal, "death, resignation, or otherwise, the trustee "shall convene a meeting of creditors for the "purpose of filling up such vacancy (s) :

"(14.) The continuing members of the committee of in- "spection may act, notwithstanding any vacancy "in their body ; and where the number of "members of the committee of inspection is for "the time being less than five, the creditors may "increase that number so that it do not exceed "five :

"(15.) No defect or irregularity in the election of a trustee "or of a member of the committee of inspection "shall vitiate any act *bonâ fide* done by him ; "and no act or proceeding of the trustee or of "the creditors shall be invalid by reason of any "failure of the creditors to elect all or any "members of the committee of inspection :

"(16.) If a member of the committee of inspection be- "come a bankrupt, his office shall thereupon "become vacant :

"(17.) Where there is no committee of inspection, any "act or thing or any direction or consent by "this Act authorised or required to be done or "given by such committee, may be done or

(g) 32 & 33 Vict. c. 71, s. 14, subsect. (3), *supra*.

(r) Sect. 83 is set out in full at pp. 1360—1362.

(s) As to summoning a meeting to remove a member of a committee of inspection see Rule 120, *post*, pp. 1366—1366.

If creditors fail to fix *quorum* to be present at meeting of committee of inspection, it shall be three.

*The Bankruptcy Rules, 1870, r. 129.*

By what number resolution of committee of inspection to be passed.

*The Bankruptcy Rules, 1870, r. 130.*

(4.) The production by the bankrupt of his statement of affairs, and fixing the day for his examination thereon.

Order for attendance of bankrupt and for production of his statement to be obtained, and sealed copy served upon him.

*The Bankruptcy Rules, 1870, r. 190.*

Form of such order.

Bankrupt, if he fail to attend, may be committed.

Meaning of "Court" in sub-s. 17 of s. 83.

*The Bankruptcy Rules, 1871, r. 10.*

"given by the Court on the application of the trustee" (f).—32 & 33 Vict. c. 71, s. 83.

It is to be noticed that the above enactment enables the creditors, *by resolution*, to fix the *quorum* required to be present at a meeting of the committee of inspection. Where, however, no such resolution is passed, the number required to be present at any meeting is settled by the following rule of "The Bankruptcy Rules, 1870" :—

"Where the creditors neglect by resolution to fix the *quorum* required to be present at a meeting of the committee of inspection, the *quorum* shall be three; or if the number of the committee be less than three, the *quorum* shall be the whole number."—"The Bankruptcy Rules, 1870," r. 129.

As regards the number of committeemen by whom a resolution is required to be passed, "The Bankruptcy Rules, 1870," provide as follows :—

"A resolution of the committee of inspection shall be passed unanimously or by a majority in number of the members present at the meeting."—"The Bankruptcy Rules, 1870," r. 130.

(4.) *Fourthly*, as to the production by the bankrupt of his statement of affairs and fixing the day for his examination thereon :—

"The Bankruptcy Act, 1869," provides that the debtor "shall produce a statement of his affairs *to the first meeting of creditors*, and shall be publicly examined thereon on a day to be named by the Court and subject to such adjourned public examination as the Court may direct" (u).

Before the first meeting an order for the attendance of the bankrupt thereat should be obtained, and sealed copy thereof served upon him. On this subject, "The Bankruptcy Rules, 1870," provide as follows :—

"An order for the attendance of the bankrupt at the first meeting and the production of his statement of affairs shall be then made by the Court, and a sealed copy of the order shall be served on the bankrupt personally, or by leaving the same with some adult inmate at his usual or last known place of residence or business."—"The Bankruptcy Rules, 1870," r. 190.

A form of order under this rule is provided (x).

Should the bankrupt not attend as directed, he is liable to be committed for contempt under section 19 of "The Bankruptcy

(f) "The Bankruptcy Rules, 1871," provide that :—

"Where a registrar of a County Court having jurisdiction in bankruptcy acts as a trustee, the word 'Court' in sub-section 17 of section 83 shall mean the Judge of such Court, and shall not include the registrar acting as Judge under powers delegated by the Judge."—"The Bankruptcy Rules, 1871," r. 10.

(u) 32 & 33 Vict. c. 71, s. 19, *ante*, pp. 1338—1339.

(x) Appendix V. No. 29.



Act, 1869" (y). And under the circumstances mentioned in section 86 of the same Act, he is liable to arrest (z).

With regard to the production of the bankrupt's statement of affairs, "The Bankruptcy Rules, 1870," further provide that :—

"At the first meeting of the creditors the bankrupt shall produce in duplicate a statement of his affairs according to the form in the schedule, but the non-production of the statement shall not delay the appointment of a trustee or necessitate the adjournment of the meeting."—"The Bankruptcy Rules, 1870," r. 92.

In the case of a *partnership* being bankrupt, *two kinds* of statements have to be produced, namely, (1.) A statement of the partnership affairs ; and (2.) A statement by each bankrupt partner of his separate affairs. The following is the provision on the subject contained in "The Bankruptcy Rules, 1870" :—

"In cases of partnership the bankrupts shall produce a statement of their partnership affairs, and each bankrupt shall produce a statement of his separate affairs."—"The Bankruptcy Rules, 1870," r. 91.

A form of the bankrupt's statement of affairs is provided (a).

(5.) *Lastly*, it is usual for the registrar, at the first meeting, to appoint the time and place of the bankrupt's public examination on his statement of affairs. "The Bankruptcy Rules, 1870," on this subject, provide that :—

"At the first meeting, or some time thereafter, the registrar shall appoint the time and place for the bankrupt to attend for his public examination by the Court, such time not being later than forty days from such first meeting, unless otherwise directed by the registrar."—"The Bankruptcy Rules, 1870," r. 96.

A form of notice in the *Gazette* of the appointment of a trustee and of a day for the public examination of the bankrupt is provided (b).

Bankrupt to produce at first meeting in duplicate a statement of his affairs.  
*The Bankruptcy Rules, 1870, r. 92.*

What statements of affairs bankrupt partners to produce.

*The Bankruptcy Rules, 1870, r. 91.*

Form of bankrupt's statement of affairs.

(5.) Appointment of bankrupt's public examination.

*The Bankruptcy Rules, 1870, r. 96.*

(y) *Ante*, pp. 1338—1339.

(z) *Ante*, pp. 1305—1306.

(a) Appendix V. No. 39.

(b) No. 42; and see Rule 111.

If creditors fail to fix *quorum* to be present at meeting of committee of inspection, it shall be three.

*The Bankruptcy Rules, 1870, r. 129.*

By what number resolution of committee of inspection to be passed.

*The Bankruptcy Rules, 1870, r. 130.*

(4.) The production by the bankrupt of his statement of affairs, and fixing the day for his examination thereon.

Order for attendance of bankrupt and for production of his statement to be

“given by the Court on the application of the trustee” (t).—32 & 33 Vict. c. 71, s. 83.

It is to be noticed that the above enactment enables the creditors, *by resolution*, to fix the quorum required to be present at a meeting of the committee of inspection. Where, however, no such resolution is passed, the number required to be present at any meeting is settled by the following rule of “The Bankruptcy Rules, 1870” :—

“Where the creditors neglect by resolution to fix the quorum required to be present at a meeting of the committee of inspection, the quorum shall be three; or if the number of the committee be less than three, the quorum shall be the whole number.”—“The Bankruptcy Rules, 1870,” r. 129.

As regards the number of committeemen by whom a resolution is required to be passed, “The Bankruptcy Rules, 1870,” provide as follows :—

“A resolution of the committee of inspection shall be passed unanimously or by a majority in number of the members present at the meeting.”—“The Bankruptcy Rules, 1870,” r. 130.

(4.) *Fourthly*, as to the production by the bankrupt of his statement of affairs and fixing the day for his examination thereon :—

“The Bankruptcy Act, 1869,” provides that the debtor “shall produce a statement of his affairs *to the first meeting of creditors*, and shall be publicly examined thereon on a day to be named by the Court and subject to such adjourned public examination as the Court may direct” (u).

Before the first meeting an order for the attendance of the bankrupt thereat should be obtained, and sealed copy thereof served upon him. On this subject, “The Bankruptcy Rules,

Act, 1869" (y). And under the circumstances mentioned in section 86 of the same Act, he is liable to arrest (z).

With regard to the production of the bankrupt's statement of affairs, "The Bankruptcy Rules, 1870," further provide that :—

"At the first meeting of the creditors the bankrupt shall produce in duplicate a statement of his affairs according to the form in the schedule, but the non-production of the statement shall not delay the appointment of a trustee or necessitate the adjournment of the meeting."—"The Bankruptcy Rules, 1870," r. 92.

In the case of a *partnership* being bankrupt, *two kinds* of statements have to be produced, namely, (1.) A statement of the partnership affairs ; and (2.) A statement by each bankrupt partner of his separate affairs. The following is the provision on the subject contained in "The Bankruptcy Rules, 1870" :—

"In cases of partnership the bankrupts shall produce a statement of their partnership affairs, and each bankrupt shall produce a statement of his separate affairs."—"The Bankruptcy Rules, 1870," r. 91.

A form of the bankrupt's statement of affairs is provided (a).

(5.) *Lastly*, it is usual for the registrar, at the first meeting, to appoint the time and place of the bankrupt's public examination on his statement of affairs. "The Bankruptcy Rules, 1870," on this subject, provide that :—

"At the first meeting, or some time thereafter, the registrar shall appoint the time and place for the bankrupt to attend for his public examination by the Court, such time not being later than forty days from such first meeting, unless otherwise directed by the registrar."—"The Bankruptcy Rules, 1870," r. 96.

A form of notice in the *Gazette* of the appointment of a trustee and of a day for the public examination of the bankrupt is provided (b).

Bankrupt to produce at first meeting in duplicate a statement of his affairs.

*The Bankruptcy Rules, 1870, r. 92.*

What statements of affairs bankrupt partners to produce.

*The Bankruptcy Rules, 1870, r. 91.*

Form of bankrupt's statement of affairs.

(5.) Appointment of bankrupt's public examination.

*The Bankruptcy Rules, 1870, r. 96.*

(y) *Ante*, pp. 1338—1339.

(z) *Ante*, pp. 1305—1306.

(a) Appendix V. No. 39.

(b) No. 42; and see Rule 111.

## BOOK VI.

### THE JURISDICTION AND PRACTICE IN BANKRUPTCY.

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#### CHAPTER XI.

##### THE PROOF OF DEBTS.

Division of the  
subject of  
proof of debts.

It will be convenient, in treating of the subject of the proof of debts, to consider—(1.) What debts are provable ; (2.) The time and mode of proving ; (3.) Expunging of proofs ; and (4.) Appeals from the decision of a trustee in bankruptcy respecting a proof.

(1.) What  
debts are  
provable.

(1.) *First*, let us see what debts are provable.

Division of  
this subject.

In dealing with this subject it will be convenient to subdivide it as follows—(a.) General description of debts *not* provable and provable ; (b.) Proof of debts, *contracted* before bankruptcy, but not *payable* when act of bankruptcy committed ; (c.) Proof of a *separate* debt against one of several *joint* bankrupts ; (d.) Proof in respect of *distinct* contracts to which bankrupt is a party as member of two or more distinct firms, or as a sole contractor and also as member of a firm ; (e.) Proof by a joint creditor against estate of a bankrupt member

“ the order of adjudication, shall be deemed to be debts provable  
 “ in bankruptcy, and may be proved in the prescribed manner  
 “ before the trustee in the bankruptcy.

“ An estimate shall be made according to the rules of the  
 “ Court for the time being in force, so far as the same may be  
 “ applicable, and where they are not applicable at the discre-  
 “ tion of the trustee, of the value of any debt or liability  
 “ provable as aforesaid, which by reason of its being subject to  
 “ any contingency or contingencies, or for any other reason,  
 “ does not bear a certain value.

An estimate  
to be made of  
the value of  
contingent  
debts.

“ Any person aggrieved by any estimate made by the trustee  
 “ as aforesaid may appeal to the Court, and the Court may, if it  
 “ think the value of the debt or liability incapable of being  
 “ fairly estimated, make an order to that effect, and upon such  
 “ order being made such debt or liability shall, for the purposes  
 “ of this Act, be deemed to be a debt not provable in bank-  
 “ ruptcy, but if the Court think that the value of the debt or  
 “ liability is capable of being fairly estimated it may direct  
 “ such value to be assessed with the consent of all the parties  
 “ interested before the Court itself without the intervention of  
 “ a jury, or if such parties do not consent by a jury, either  
 “ before the Court itself or some other competent Court, and  
 “ may give all necessary directions for such purpose, and the  
 “ amount of such value when assessed shall be provable as a  
 “ debt under the bankruptcy.

Any person  
aggrieved by  
any estimate  
may appeal  
therefrom.

“ ‘Liability’ shall for the purposes of this Act include any  
 “ compensation for work or labour done, any obligation or pos-  
 “ sibility of an obligation to pay money or money’s worth on  
 “ the breach of any express or implied covenant, contract,  
 “ agreement, or undertaking, whether such breach does or does  
 “ not occur, or is or is not likely to occur or capable of occur-  
 “ ring before the close of the bankruptcy, and generally it  
 “ shall include any express or implied engagement, agreement,  
 “ or undertaking, to pay or capable of resulting in the payment  
 “ of money or money’s worth, whether such payment be as  
 “ respects amount fixed or unliquidated; as respects time  
 “ present or future, certain or dependent on any one contin-  
 “ gency or on two or more contingencies; as to mode of  
 “ valuation capable of being ascertained by fixed rules, or  
 “ assessable only by a jury, or as matter of opinion.”—32 & 33  
 Vict. c. 71, s. 31.

Definition of  
word “liability” for  
purposes of  
proof.

*The Bank-  
ruptcy Act,  
1869, s. 31.*

The effect of the above enactment is, then, briefly, to render  
 all debts and liabilities, *present* or *future*, *certain* or *contingent*,  
 provable in bankruptcy, except (1.) Demands in the nature of  
 unliquidated damages arising otherwise than by reason of a  
 contract or promise; and (2.) Any debt or liability contracted  
 by the bankrupt subsequently to the date of an act of bank-  
 ruptcy of which the creditor had notice.

A debt or liability provable in bankruptcy is sometimes

When a credi-

tor can prove for debt and interest thereon.

*The Bankruptcy Act, 1869, s. 36.*

In what cases interest allowable, though not reserved or agreed for.

*The Bankruptcy Rules, 1870, r. 77.*

Debts provable are liable to reduction by set-off.

Cases in which set-off is allowed.

*The Bank-*

entitled to have interest added to it. For "The Bankruptcy Act, 1869," provides that :—

"Interest on any debt provable in bankruptcy may be allowed by the trustee under the same circumstances in which interest would have been allowable by a jury if an action had been brought for such debt."—32 & 33 Vict. c. 71, s. 36.

Moreover, on this subject "The Bankruptcy Rules, 1870," also provide as follows :—

"Upon all debts or sums certain, payable at a certain time or otherwise, whereupon interest is not reserved or agreed for, and which shall be overdue at the date of the order of adjudication and provable in bankruptcy, the creditor shall be entitled to prove for interest, to be calculated, at a rate not exceeding four pounds per centum per annum, up to the date of the said order, from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the time of payment."—"The Bankruptcy Rules, 1870," r. 77 (a).

While, on the one hand, as we have just seen, a debt provable in bankruptcy is liable to be *increased* by interest being added to it, so, on the other hand, it is also liable to be diminished by any set-off which may exist between the creditor seeking to prove and the bankrupt. On this subject, "The Bankruptcy Act, 1869," provides as follows :—

"Where there have been mutual credits, mutual debts, or other mutual dealings between the bankrupt and any other person proving or claiming to prove a debt under his bankruptcy, the court shall be taken of what is due from the

“and which shall be overdue at the date of the order of adjudication, and provable in bankruptcy, the creditor shall be entitled to prove for interest, to be calculated, at a rate not exceeding four pounds per centum per annum, up to the date of the said order, from the time when such debts or sums certain were payable, if such debts or sums be payable otherwise, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the time of payment.

Such debts are provable, but subject to certain deductions.

*The Bankruptcy Rules, 1870, r. 77.*

“Any creditor may prove for a debt not payable when the bankrupt committed an act of bankruptcy, and be entitled to prove such debt as if the same was payable presently, and receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of five pounds per centum per annum, computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms upon which it was contracted.”—“The Bankruptcy Rules, 1870,” r. 77.

In regard to rent and other periodical payments, the whole of which may not be due when the order for adjudication is made, “The Bankruptcy Act, 1869,” provides as follows:—

“When any rent or other payment falls due at stated periods, and the order of adjudication is made at any time other than one of such periods, the person entitled to such rent or payment may prove for a proportionate part thereof up to the day of the adjudication as if such rent or payment grew due from day to day.”—32 & 33 Vict. c. 71, s. 35.

Proof in respect of rent and other periodical payments when bankruptcy occurs between two periods of payment.

*The Bankruptcy Act, 1869, s. 35.*

(c.) As to the proof of a *separate* debt against one of several *joint* bankrupts.

“The Bankruptcy Rules, 1870,” provide as follows:—

“Any separate creditor of any bankrupt shall be at liberty to prove his debt under any adjudication of bankruptcy made against such bankrupt jointly with any other person or persons. And under every such adjudication distinct accounts shall be kept of the joint estate and also of the separate estate or estates of each bankrupt, and the separate estate shall be applied in the first place in satisfaction of the debts of the separate creditors. And in case there shall be an overplus of the separate estate, such overplus shall be carried to the account of the joint estate. And in case there shall be an overplus of the joint estate, such overplus shall be carried to the account of the separate estates of each bankrupt in proportion to the right and interest of each bankrupt in the joint estate. And the cost of taking such accounts shall be paid out of the joint and separate estates respectively as the Court shall direct.”—“The Bankruptcy Rules, 1870,” r. 76.

(c.) Proof of *separate* debt against one of several *joint* bankrupts.

Rule applicable to such cases.

*The Bankruptcy Rules, 1870, r. 76.*

(d.) Proof in respect of *distinct* contracts made by bankrupt as member of several firms, or otherwise.

Against what properties proof to be made in such cases.

*The Bankruptcy Act, 1869, s. 37.*

(e.) Proof in respect of a debt due by bankrupt partner to his firm jointly with creditor seeking to prove.

Effect of proof in such cases.

*The Bankruptcy Act, 1869, s. 103.*

(f.) Proof of a secured debt.

(d.) Proof in respect of *distinct* contracts to which bankrupt is a party as member of two or more firms, or as a sole contractor, and also as member of a firm.

"The Bankruptcy Act, 1869," provides as follows:—

"If any bankrupt is at the date of the order of adjudication liable in respect of distinct contracts as member of two or more distinct firms, or as a sole contractor, and also as member of a firm, the circumstance that such firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of such contracts, against the properties respectively liable upon such contracts."—32 & 33 Vict. c. 71, s. 37.

(e.) Proof by a creditor against estate of a bankrupt member of a firm, in respect of a debt due by latter to such creditor jointly with solvent partners.

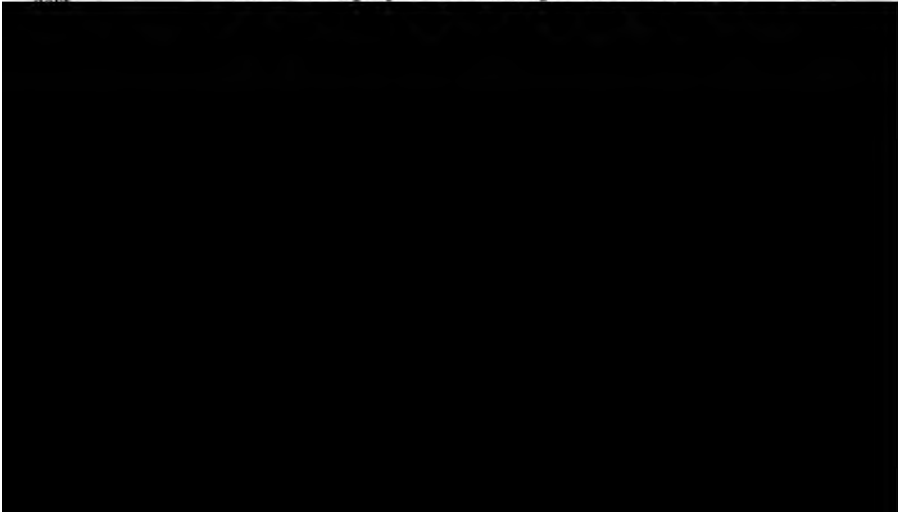
"The Bankruptcy Act, 1869," provides as follows:—

"If one partner of a firm is adjudged bankrupt, any creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat, but shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts."—32 & 33 Vict. c. 71, s. 103.

It is to be noticed that a joint creditor proving under this section, though entitled to vote equally with the bankrupt's separate creditors, receives no dividend until the claims of the latter have been fully satisfied.

(f.) Proof of a *secured* debt.

"The Bankruptcy Act, 1869," provides as follows:—





“to the trustee the amount which his security shall produce beyond the amount of such assessed value, and the trustee shall be entitled at any time before realization of such security by the creditor, to redeem the same upon payment of such assessed value.”—“The Bankruptcy Rules, 1870,” r. 100.

Right of trustee to excess over estimated value of security, and to redeem security.

“The proof of any such creditor shall not be increased in the event of the security realizing a less sum than the value at which he has so assessed the same.”—“The Bankruptcy Rules, 1870,” r. 101.

*The Bankruptcy Rules, 1870, r. 100.*

When a creditor is a mortgagee, or has security over any part of the bankrupt's estate or effects, real or personal, the Court has power to direct a sale of the mortgaged premises or property. Out of the sum realized by this sale, the costs, charges, and expenses of the trustee are *first* paid. Then the remainder is applied in payment of the mortgagee or other person holding property of the bankrupt as security. And, if the monies arising from the sale be insufficient to satisfy what shall be found due to such mortgagee or person so having security, then he shall be entitled to *prove for such deficiency*. These provisions are all contained in the following rules of “The Bankruptcy Rules, 1870” :—

If security realize less than estimated value, proof not to be increased.

*The Bankruptcy Rules, 1870, r. 101.*

“Upon application by motion by any person claiming to be a mortgagee of, or to have security over any part of the bankrupt's estate or effects, real or personal, and whether such mortgage or security shall be by deed or otherwise, and whether the same shall be of a legal or equitable nature, the Court will proceed to inquire whether such person is such mortgagee, or is entitled to such security, and for what consideration and under what circumstances; and if it shall be found that such person is such mortgagee, or is entitled to such security, and no sufficient objection shall appear to the title of such person to the sum claimed by him, under such mortgage or security, the Court will then proceed to take an account of the principal, interest, and costs due upon such mortgage or security, and of the rents and profits, or dividends, interest, or other proceeds received by such person, or by any other person by his order or for his use, in case he shall have been in possession of the property over which the mortgage or security shall extend, or any part thereof, and the Court will then direct notice to be given in such public papers as it shall think fit, when and where, and by whom and in what way the said premises or property, or the interest therein so mortgaged, or over which the security shall so extend, are to be sold, and that such sale be made accordingly, and that the trustee (unless it be otherwise ordered) shall have the conduct of such sale; but it shall not be imperative on any such mortgagee to make such application.”—“The Bankruptcy Rules, 1870,” r. 78.

When the Court will direct a sale of mortgaged premises, or of estate or effects over which security claimed or held.

*The Bankruptcy Rules, 1870, r. 78.*

All proper parties to join in conveyance to purchaser.

*The Bankruptcy Rules, 1870, r. 79.*

The application of moneys arising from such sale.

*The Bankruptcy Rules, 1870, r. 80.*

Power of Court to examine parties on interrogatories or otherwise, in order to make necessary inquiries, and to take accounts, and make title to purchaser.

*The Bankruptcy Rules, 1870, r. 81.*

"All proper parties shall join in the conveyance to the purchaser, where necessary, as the Court shall direct."—"The Bankruptcy Rules, 1870," r. 79.

"The monies to arise from such sale shall be applied in the first place in payment of the costs, charges, and expenses of the trustee, of and occasioned by the application to the Court, and of and attending such sale, and then in payment and satisfaction so far as the same shall extend of what shall be found due to such mortgagee, or person so having security, for principal, interest, and costs, and that the surplus of the said monies (if any) be paid to the trustee. But in case the monies to arise from such sale shall be insufficient to pay and satisfy what shall be so found due to such mortgagee or person so having security, then he shall be entitled to prove as a creditor for such deficiency, and receive dividends thereon rateably with the other creditors, but so as not to disturb any dividend or dividends then already made."—"The Bankruptcy Rules, 1870," r. 80.

"For the better making such inquiry and taking such account, and making a title to the purchaser, all parties may be examined by the Court upon interrogatories or otherwise as it shall think fit, and shall produce before the Court upon oath all deeds, papers, and writings in their respective custody or power, relating to the estate or effects of the bankrupt, as the Court shall direct."—"The Bankruptcy Rules, 1870," r. 81.

(2.) *Secondly*, as to the *time, mode, and costs* of proving.

The *time* and *mode* of proving debts are indicated by the following rules of "The Bankruptcy Rules, 1870" :—

"A creditor may prove his debt at any duly summoned meeting of creditors, or at any time before the meeting, by delivering or sending through the post in a prepaid letter

"A company or other body incorporated or authorised to sue may prove their debt by an agent, according to the form in the schedule."—"The Bankruptcy Rules, 1870," r. 69.

A form of affidavit of proof of debt by an agent of a company is provided (c).

The trustee, having received the proofs, decides upon them, in the prescribed manner, and may, if necessary, administer oaths (d). And "The Bankruptcy Rules, 1870," provide that :—

"A creditor's trustee as soon as may be after his appointment, and after the receipt of a proof of a debt, shall examine every proof and the grounds of the debt, and in writing reject or admit it, in whole or in part, or require further evidence in support thereof, and when he shall admit or reject any claim he shall give notice thereof in writing to the creditor, stating, in case of rejection, the grounds thereof."—"The Bankruptcy Rules, 1870," r. 72.

If the trustee rejects the proof he must, it will be noticed, state on what grounds he does so. And it is apprehended that, in the event of an appeal from his decision, he is precluded from alleging other grounds for his decision than those first put forward by him.

Whether a proof be rejected or allowed the following rule of "The Bankruptcy Rules, 1870," applies :—

"The trustee shall, within seven days of his allowing or disallowing a proof, file such proof with the registrar with a memorandum thereon of his allowance or disallowance thereof."—"The Bankruptcy Rules, 1870," r. 118.

Not only must the trustee file the proof and memorandum with the registrar, in accordance with the rule just set out, but he must also on the first of every month send to the registrar a certified list of all proofs, if any, tendered during the month next preceding, distinguishing in such list, the proofs admitted, those rejected, and such as stand over for further consideration (e).

Before a trustee in bankruptcy is appointed the admission and disallowance of proofs rest with the registrar in his capacity of trustee. On this subject "The Bankruptcy Rules, 1870," provide as follows :—

"A registrar in his capacity of trustee may admit proofs, and upon sufficient cause shown, disallow any proof to which objection may be taken at the first or any other meeting of creditors."—"The Bankruptcy Rules, 1870," r. 70.

"Where a trustee has been appointed by the creditors, the proofs of debts that have been received by the registrar shall

Proof by a public company.

*The Bankruptcy Rules, 1870, r. 69.*

Examination of proofs by trustee in bankruptcy.

*The Bankruptcy Rules, 1870, r. 72.*

Trustee to file proof with registrar.

*The Bankruptcy Rules, 1870, r. 118.*

Before election of trustee, the registrar to examine and decide on validity of proofs.

Admission and disallowance of proofs by registrar acting as trustee.

*The Bankruptcy Rules, 1870, r. 70.*

(c) Appendix V. Form No. 34.

(d) 32 & 33 Vict. c. 71, s. 25, subsect. (1), *post*, p. 1368.

(e) Rule 75.

Proofs received to be handed to trustee.

*The Bankruptcy Rules, 1870, r. 71.*

Creditor to bear cost unless otherwise ordered.

*The Bankruptcy Rules, 1870, r. 127.*

(3.) Expunging of proofs.

Application by trustee to expunge.

*The Bankruptcy Rules, 1870, r. 73.*

(4.) Appeal from trustee's decision.

Within what time.

*The Bankruptcy Rules, 1870, r. 74.*

"be given over to the trustee, but the registrar shall make and file a list of such proofs on the proceedings."—"The Bankruptcy Rules, 1870," r. 71.

As regards the *cost* of making proof of a debt, this must be borne by the creditor unless the Court make a special order to the contrary. "The Bankruptcy Rules, 1870," contain the following rule on the subject:—

"A creditor shall bear the cost of making proof of his debt, unless the Court shall otherwise specially order, and no part of the expense of any competition of the office of trustee shall be paid out of the estate."—"The Bankruptcy Rules, 1870," r. 127.

(3.) *Thirdly*, as to the expunging of proofs.

If the trustee has improperly admitted a debt, he may apply to the Court to have it expunged, "The Bankruptcy Rules, 1870," providing that:—

"If at any time after the admission of any debt by the trustee he shall have reason to believe that such debt has been improperly admitted, he may apply to the registrar, upon affidavit setting forth the facts, for a day to be appointed for the Court to consider the propriety of expunging the proof or reducing the amount thereof."—"The Bankruptcy Rules, 1870," r. 73.

(4.) *Fourthly*, appeal from the decision of a trustee in bankruptcy respecting proofs.

The decision of a trustee rejecting a proof is not final, for "The Bankruptcy Rules, 1870," provide that:—

"Any creditor dissatisfied with the decision of the trustee in respect of a proof, may, within fourteen days after the receipt of the notice from the trustee, apply to the Court to vary or reverse the decision, and the creditor shall give notice to the trustee thereof seven days before the day so fixed."—"The Bankruptcy Rules, 1870," r. 74.

## BOOK VI.

### THE JURISDICTION AND PRACTICE IN BANKRUPTCY.

#### CHAPTER XII.

##### THE TRUSTEE IN BANKRUPTCY.

It is proposed, in the present chapter, to treat fully of the trustee in bankruptcy, and to include in it everything relating to this official. Consequently it will be convenient to adopt the following arrangement of the subject, viz. :—I. The appointment and remuneration of the trustee in bankruptcy. II. The powers of the trustee in bankruptcy. III. The duties of the trustee in bankruptcy ; and IV. The release of the trustee in bankruptcy.

Division of  
the subject.

##### SECTION I.—THE APPOINTMENT AND REMUNERATION OF THE TRUSTEE IN BANKRUPTCY.

It has already been stated (a) that the proper time to appoint a trustee in bankruptcy is at the first meeting of creditors. On this subject, “The Bankruptcy Act, 1869” provides as follows :—

Trustee should  
be appointed  
at the first  
meeting of  
creditors.

“ When an order has been made adjudging a debtor bankrupt, herein referred to as an order of adjudication, the property of the bankrupt shall become divisible amongst his creditors in proportion to the debts proved by them in the bankruptcy ; and for the purpose of effecting such division the Court shall, as soon as may be, summon a general meeting of his creditors, and the creditors assembled at such meeting shall and may do as follows :

*The Bankruptcy Act,*  
1869, s. 14.

- “ 1. They shall, by resolution, appoint some fit person,  
“ whether a creditor or not, to fill the office of  
“ trustee of the property of the bankrupt at such  
“ remuneration as they may from time to time de-  
“ termine, if any ; or they may resolve to leave his

(a) *Ante*, p. 1346.

- “appointment to the committee of inspection  
“hereinafter mentioned :
- “ 2. They shall, when they appoint a trustee, by resolution  
“declare what security is to be given, and to whom,  
“by the person so appointed, before he enters on  
“office of trustee (*b*) :
- “ 3. They shall, by resolution, appoint some other fit  
“persons not exceeding five in number, and being  
“creditors, qualified to vote at such first meeting of  
“creditors as is in this Act mentioned, or authorised  
“in the prescribed form by creditors so qualified to  
“vote, to form a committee of inspection for the  
“purpose of superintending the administration by  
“the trustee of the bankrupt’s property :
- “ 4. They may, by resolution, give directions as to the  
“manner in which the property is to be adminis-  
“tered by the trustee, and it shall be the duty of  
“the trustee to conform to such directions unless  
“the Court for some just cause otherwise orders.”—  
32 & 33 Vict. c. 71, s. 14.

More than one  
person may be  
appointed  
trustee.

How appoint-  
ment made.

Failure to ap-  
point trustee  
at first meet-  
ing, how  
remedied.

The creditors, as appears from section 83 of “The Bankruptcy Act, 1869,” (which will presently be set out in full) may appoint several persons to be trustees.

The appointment of a trustee is made by passing an *ordinary* resolution (*c*).

If the creditors do not, in due course, appoint a trustee, the bankruptcy may be annulled. On this subject “The Bankruptcy Act, 1869,” provides as follows:—

“But if, at such meeting of creditors, or at some adjourn-  
“ment thereof, no trustee is appointed, by reason of the pre-  
“scribed quorum not being present, or for any other reason

- “ of the property of the bankrupt. The creditors  
 “ may also appoint persons to act as trustees in  
 “ succession in the event of one or more of the  
 “ persons first named declining to accept the  
 “ office of trustee :
- “ (2.) If any vacancy occur in the office of trustee by  
 “ death, resignation, or otherwise, the creditors  
 “ in general meeting shall fill up such vacancy,  
 “ and a general meeting for the purpose of filling  
 “ up such vacancy may be convened by the con-  
 “ tinuing trustee, if there be more than one,  
 “ or by the registrar on the requisition of any  
 “ creditor :
- “ (3.) If, through any cause whatever, there is no trustee  
 “ acting during the continuance of a bankruptcy,  
 “ the registrar of the Court for the time being  
 “ having jurisdiction in the bankruptcy shall act  
 “ as such trustee :
- “ (4.) The Court may, upon cause shown, remove any  
 “ trustee. The creditors may, by special resolu-  
 “ tion at a meeting specially called for that  
 “ purpose, of which seven days notice has been  
 “ given, remove the trustee and appoint another  
 “ person to fill his office, and the Court shall give  
 “ a certificate declaring him to be the trustee :
- “ (5.) If a trustee be adjudged bankrupt, he shall cease  
 “ to be trustee, and the registrar shall, if there  
 “ be no other trustee, call a meeting of creditors  
 “ for the appointment of another trustee in his  
 “ place :
- “ (6.) The property of the bankrupt shall pass from  
 “ trustee to trustee, including under that term  
 “ the registrar when he fills the office of trustee,  
 “ and shall vest in the trustee for the time being  
 “ during his continuance in office, without any  
 “ conveyance, assignment, or transfer whatever :
- “ (7.) The trustee of a bankrupt may sue and be sued by  
 “ the official name of ‘ the trustee of the prop-  
 “ erty of                      a bankrupt,’ inserting the  
 “ name of the bankrupt, and by that name may  
 “ hold property of every description, make con-  
 “ tracts, sue and be sued, enter into any engage-  
 “ ments binding upon himself and his successors  
 “ in office, and do all other acts necessary or  
 “ expedient to be done in the execution of his  
 “ office :
- “ (8.) The certificate of appointment of a trustee shall, for  
 “ all purposes of any law in force in any part of  
 “ the British dominions requiring registration,

“ enrolment, or recording of conveyances or assignments of property, be deemed to be a conveyance or assignment of property, and may be registered, enrolled, and recorded accordingly :

“(9.) All acts and things by this Act authorized or required to be done by or to the registrar may be done within the district of each Court having jurisdiction in bankruptcy by or to the registrar of that Court :

“(10.) Any member of the committee of inspection may resign his office by notice in writing signed by him, and delivered to the trustee :

“(11.) The creditors may by resolution fix the quorum required to be present at a meeting of the committee of inspection :

“(12.) Any member of the committee of inspection may also be removed by a special resolution at any meeting of creditors of which the prescribed notice has been given, stating the object of the meeting :

“(13.) On any vacancy occurring in the office of a member of the committee of inspection by removal, death, resignation, or otherwise, the trustee shall convene a meeting of creditors for the purpose of filling up such vacancy :

“(14.) The continuing members of the committee of inspection may act, notwithstanding any vacancy in their body ; and when the number of members of the committee of inspection is for the time being less than five, the creditors may



The trustee having been appointed, the resolutions mentioned in subsects. 2 and 3 of sect. 14 (*f*) should be passed, but an omission to do so does not invalidate the resolution by which the trustee is appointed. On this subject "The Bankruptcy Rules, 1870," provide as follows:—

"Omission to pass a resolution under sub-section two or three of section fourteen of the Act shall not invalidate the appointment of a trustee, and where no security has been specified to be given by the trustee, he shall be deemed to be personally responsible, in the performance of the duties of his office, to the extent of the value of the property of the bankrupt."—"The Bankruptcy Rules, 1870," r. 106 (*g*).

"Where, at the first meeting or any adjournment thereof, the creditors shall resolve that one or more named persons shall be accepted as the sureties of the trustee, it shall not be necessary for the said persons to justify their sufficiency."—"The Bankruptcy Rules, 1870," r. 107.

The appointment of the trustee does not, however, date from the passing of the resolution by the creditors, but from the date of the certificate of the Court declaring his appointment. For "The Bankruptcy Act, 1869," provides that:—

"The appointment of a trustee shall be reported to the Court, and the Court, upon being satisfied that the requisite security has been entered into by him, shall give a certificate, declaring him to be trustee of the bankruptcy named in the certificate, and such certificate shall be conclusive evidence of the appointment of the trustee, and such appointment shall date from the date of the certificate. When the registrar holds the office of trustee, or when the trustee is changed, a like certificate of the Court may be made declaring the person therein named to be trustee, and such certificate shall be conclusive evidence of the person therein named being trustee."—32 & 33 Vict. c. 71, s. 18.

In accordance with the terms of this section is the following rule of "The Bankruptcy Rules, 1870":—

"Immediately upon the appointment of a trustee being reported, the Court shall give to the trustee a certificate declaring him to be the trustee, provided he has given such security, if any, as may have been required by the creditors."—"The Bankruptcy Rules, 1870," r. 105.

A form of report is provided (*h*). Likewise a form of certificate (*i*).

The certificate delivered to the trustee is deemed for certain purposes to be a conveyance or assignment of property, as

Appointment of trustee valid, though his security not fixed by resolution.

*The Bankruptcy Rules, 1870, r. 106.*

Sureties for trustee accepted by creditors need not justify their sufficiency.

*The Bankruptcy Rules, 1870, r. 107.*

Appointment of trustee to be reported to the Court and a certificate of appointment given to him.

*The Bankruptcy Act, 1869, s. 18.*

The certificate will be given to trustee after he has given the security, if any, required of him.

*The Bankruptcy Rules, 1870, r. 105.*

Form of report and of certificate.

(*f*) *Ante*, p. 1360.

(*g*) For Rules relative to security, see *ante*, p. 1317 *et seq.*

(*h*) Appendix V. Form No. 38.

(*i*) Appendix V. Form No. 41.

For what purposes trustee's certificate of appointment to operate as a conveyance or assignment of property.

*The Bankruptcy Act, 1839, s. 83, sub-s. (8).*

Where the registrar acts as trustee he need not give security.

*The Bankruptcy Rules, 1870, r. 128.*

Notice of trustee's appointment to be gazetted.

*The Bankruptcy Rules, 1870, r. 111.*

Form of notice

appears from the following provision of "The Bankruptcy Act, 1869" :—

"The certificate of appointment of a trustee shall, for all purposes of any law in force in any part of the British dominions requiring registration, enrolment, or recording of conveyances or assignments of property, be deemed to be a conveyance or assignment of property, and may be registered, enrolled, and recorded accordingly."—32 & 33 Vict. c. 71, s. 83, sub-sect. (8.) (k).

It is to be noticed that the trustee is required, before entering on the duties of his office, to give security (l). When, however, the office of trustee is filled by the registrar of the Court, this is not exacted. On this subject "The Bankruptcy Rules, 1870," provide as follows :—

"Where the registrar is trustee of the property of a bankrupt by reason of there being no trustee acting during the bankruptcy, he shall not be required to give security, but his accounts shall, if there be no committee of inspection, be audited by the comptroller or treasurer of the Court or other person acting as treasurer, according as the proceeding is in the London Bankruptcy Court or the County Court."—"The Bankruptcy Rules, 1870," r. 128.

The appointment of the trustee being complete, notice thereof must be given in accordance with the following rule of "The Bankruptcy Rules, 1870" :—

"Notice of the appointment of the trustee, and of the day for the public examination of the bankrupt, shall be gazetted forthwith, and be inserted in one local paper by the trustee, and he shall send a copy of the notice to each creditor."—"The Bankruptcy Rules, 1870," r. 111.

A form of notice to be inserted in the Gazette, as required by

form of minutes to be kept at this meeting is provided (*p*). And there is, likewise, a form of report and certificate of appointment of trustee to fill a vacancy caused by a resignation (*g*).

fill vacancy in office of trustee.

It sometimes happens that the vacancy in the office of trustee is not, for some reason, filled up. When this is the case, the Court may either carry on the bankruptcy with the aid of the registrar as trustee, or annul the order of adjudication, as it thinks just (*r*).

Effect of vacancy in office of trustee not being filled up.

"The Bankruptcy Rules, 1870," provide that :—

"Where in consequence of a bankruptcy being closed, or of a vacancy in the office of trustee, the registrar becomes trustee, the attorney (if any) who has theretofore acted in the matter of the bankruptcy shall not be changed unless the Court shall by order, setting forth the reasons for the change, otherwise direct."—"The Bankruptcy Rules, 1870," r. 115.

Vacancy in office of trustee not to cause change of solicitor.

*The Bankruptcy Rules*, 1870, r. 115.

If a trustee becomes a bankrupt, he, *ipso facto*, ceases to be trustee. On this subject "The Bankruptcy Act, 1869," enacts that :—

Disqualification of trustee who is bankrupt to act.

"If a trustee be adjudged bankrupt, he shall cease to be trustee, and the registrar shall, if there be no other trustee, call a meeting of creditors for the appointment of another trustee in his place."—32 & 33 Vict. c. 71, s. 83, sub-s. (5.)

If trustee be adjudged bankrupt, another to be appointed in his place.

The trustee is liable, upon cause shown, to be removed. On this subject, "The Bankruptcy Act, 1869," provides as follows :—

*The Bankruptcy Act*, 1869, s. 83, sub-s. (5).

"The Court may, upon cause shown, remove any trustee. The creditors may, by special resolution at a meeting specially called for that purpose, of which seven days notice has been given, remove the trustee, and appoint another person to fill his office, and the Court shall give a certificate declaring him to be the trustee."—32 & 33 Vict. c. 71, s. 83, sub-sect. (4.) (*s*).

The removal of trustees.

*The Bankruptcy Act*, 1869, s. 83, sub-s. (4).

The practice in regard to the removal of a trustee is specified by the following rule of "The Bankruptcy Rules, 1870" :—

"Where a creditor desires a meeting of creditors to be held to remove a trustee or a member of the committee of inspection, he shall apply to some member of the committee of inspection to specially summon a meeting for that purpose, and for the purpose of appointing another person to fill the office, by sending a notice to each creditor seven days before the meeting is to be held ; and where such member refuses to summon a meeting, or there is no committee of inspection, the creditor may apply to the Court upon an affidavit stating

Practice in regard to obtaining the removal of a trustee.

*The Bankruptcy Rules*, 1870, r. 120.

(*p*) Appendix V. Form No. 47.

(*g*) Appendix V. Form No. 48.

(*r*) Sect. 84, *ante*, p. 1345.

(*s*) This section is set out in full, *ante*, pp. 1360—1362.

Conduct of trustee on resigning his office or being removed therefrom.

*The Bankruptcy Rules, 1870, r. 126.*

Remuneration of the trustee in bankruptcy. Remuneration of trustee to be fixed by vote.

How trustee to be remunerated where no remuneration has been voted.

*The Bankruptcy Rules, 1870, r. 108.*

No allowance to trustee for

“specifically the facts which would appear to justify the removal of such trustee or a member of the committee of inspection, and the Court may direct the registrar to summon a meeting accordingly, or if it think fit may direct notice to be given to the trustee to show cause why the Court should not remove him.”—“The Bankruptcy Rules, 1870,” r. 120.

The following rule of “The Bankruptcy Rules, 1870,” indicates what is to be the conduct of a trustee on his removal :—

“Where a trustee shall resign, or be removed from his office, he shall, within four days thereafter, render to the registrar, to be filed with the proceedings, an account in writing showing what he has done while trustee, and shall duly account for all monies or property of the bankrupt. If he do not comply with these requisitions within the prescribed time, the Court shall enforce obedience thereto.”—“The Bankruptcy Rules, 1870,” r. 126.

We will pass on to the subject of the remuneration of trustees in bankruptcy.

“The Bankruptcy Act, 1869,” provides, as we have already seen (*t*), that the trustee shall receive such remuneration as the creditors may from time to time determine (*t*).

Where, however, no remuneration is *voted*, his costs and expenses are defrayed in the manner pointed out by the following rule of “The Bankruptcy Rules, 1870” :—

“Where no remuneration has been voted to a trustee, he shall be allowed out of the bankrupt’s estate such proper costs and expenses as may be incurred by him in or about the proceedings of the bankruptcy as the taxing master or registrar shall allow.”—“The Bankruptcy Rules, 1870,” r. 108.

As regards what costs will be allowed to the trustee under

spection, appoint a solicitor or other agent (*u*). But where the trustee in bankruptcy is himself a *solicitor*, he may make a special contract as to his remuneration. On this subject "The Bankruptcy Act, 1869," provides as follows:—

"A trustee shall not, without the consent of the committee of inspection, employ a solicitor or other agent; but where the trustee is himself a solicitor he may contract to be paid a certain sum by way of per-centage or otherwise as a remuneration for his services as trustee, including all professional services, and any such contract shall, notwithstanding any law to the contrary, be lawful."—32 & 33 Vict. c. 71, s. 29.

Where a trustee resigns, dies, or is removed, *prior to obtaining his release*, his remuneration is provided for in the manner indicated by the following rule of "The Bankruptcy Rules, 1870":—

"Where a trustee resigns, dies, or is removed prior to obtaining his release, the creditors shall determine what, if any, remuneration shall be paid for the services which he may have rendered."—"The Bankruptcy Rules, 1870," r. 121.

Trustee is not to employ solicitor without consent of committee of inspection, but if he is himself a solicitor he may make special contract as to remuneration.

*The Bankruptcy Act, 1869, s. 29.*

Remuneration of trustee ceasing to act prior to obtaining his release.

*The Bankruptcy Rules, 1870, r. 121.*

## SECTION II.—THE POWERS OF THE TRUSTEE IN BANKRUPTCY.

Some of the *powers* of the trustee in bankruptcy cannot be conveniently considered apart from his *duties*. Such powers will not, therefore, be noticed in this section. There are, however, certain other powers of a different character, to which attention will now be called.

It may be as well, at the outset, to state that the trustee of a bankrupt possesses an *official name* by which he may sue and be sued, hold property, and generally transact his official business. On this subject "The Bankruptcy Act, 1869," provides as follows:—

"The trustee of a bankrupt may sue and be sued by the official name of 'the trustee of the property of a bankrupt,' inserting the name of the bankrupt, and by that name may hold property of every description, make contracts, sue and be sued, enter into any engagements binding upon himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office."—32 & 33 Vict. c. 71, s. 88, sub-sect. 7 (*x*).

We will now notice certain general powers which are conferred upon the trustee in bankruptcy by "The Bankruptcy Act, 1869." In doing so, it will be as well to set out, (1.) Powers which the trustee in bankruptcy may exercise *without*

Certain powers possessed by a trustee in bankruptcy.

The trustee may sue and be sued by his official name, and hold property thereby.

*The Bankruptcy Act, 1869, s. 83, sub-s. (7).*

Powers of trustee of two kinds.

(*u*) 32 & 33 Vict. c. 17, s. 29, *infra*.

(*x*) This section is set out in full at pp. 1360—1362.

the sanction of the committee of inspection ; and (2.) Powers which the trustee may exercise *with* the sanction of the committee of inspection.

(1.) Enumeration of powers which trustee in bankruptcy may exercise *without* sanction of committee of inspection.

*The Bankruptcy Act, 1869, s. 25.*

(1.) *First*, as to the powers which the trustee in bankruptcy may exercise *without* the sanction of the committee of inspection. On this subject "The Bankruptcy Act, 1869," provides as follows :—

"Subject to the provisions of this Act, the trustee shall have power to do the following things :—

"(1.) To receive and decide upon proof of debts in the prescribed manner, and for such purpose to administer oaths :

"(2.) To carry on the business of the bankrupt, so far as may be necessary for the beneficial winding up of the same :

"(3.) To bring or defend any action, suit, or other legal proceeding relating to the property of the bankrupt :

"(4.) To deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with the same ; and the sections fifty-six to seventy-three (both inclusive) of the Act of the session of the third and fourth years of the reign of King William the Fourth (chapter seventy-four), 'for the abolition of fines and recoveries and for the substitution of more simple modes of assurance,' shall extend and apply to proceedings in bankruptcy under this Act, as if those sections were here re-enacted, and made applicable in terms to such pro-

“(8.) To prove, rank, claim, and draw a dividend in the  
“matter of the bankruptcy or sequestration of  
“any debtor of the bankrupt.”—32 & 33 Vict.  
c. 71, s. 25.

It is to be noticed, that sub-section 3 of the above section empowers the trustee to bring or defend any action, &c., relating to the property of the bankrupt. When the bankrupt is a member of a partnership firm, the trustee, with the authority of the Court and the consent of the creditors, may commence such an action in his own name and in that of the bankrupt's partner. “The Bankruptcy Act, 1869,” on this subject provides as follows :—

Where the trustee may commence an action in his own name and in that of bankrupt's partner.

“Where a member of a partnership is adjudged bankrupt, the Court may authorise the trustee, with consent of the creditors, certified by a special resolution, to commence and prosecute any action or suit in the names of the trustee and of the bankrupt's partner ; and any release by such partner of the debt or demand to which the action or suit relates shall be void ; but notice of the application for authority to commence the action or suit shall be given to such partner, and he may show cause against it, and on his application the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action or suit, and if he does not claim any benefit therefrom, he shall be indemnified against costs in respect thereof as the Court directs.”—32 & 33 Vict. c. 79, s. 105.

*The Bankruptcy Act, 1869, s. 105.*

As regards sub-section 5 of section 25, it is observable that it enables the trustee “to execute all powers of attorney, deeds, and other instruments expedient or necessary for the purpose of carrying into effect the provisions of this Act.” A subsequent section of “The Bankruptcy Act, 1869,” would appear to exempt all such deeds, &c., from stamp duty. The section referred to is as follows :—

Conveyances, &c., by trustee exempt from stamp duty.

*The Bankruptcy Act, 1869, s. 113.*

“Every deed, conveyance, assignment, surrender, admission, or other assurance relating solely to freehold, leasehold, copyhold, or customary property, or to any mortgage, charge, or other incumbrance on, or any estate, right, or interest in, any real or personal property which is part of the estate of any bankrupt, and which, after the execution of such deed, conveyance, assignment, surrender, admission, or other assurance, either at law or in equity, is or remains the estate of the bankrupt or of the trustee under the bankruptcy, and every power of attorney, proxy, paper, writ, order, certificate, affidavit, bond, or other instrument or writing relating solely to the property of any bankrupt, or to any proceeding under any bankruptcy, shall be exempt from stamp duty (except in respect of fees under this Act).”—32 & 33 Vict. c. 71, s. 113.

It is also to be noticed that sub-section 6 of section 25 em-

Assignee of

bankrupt's choses in action may sue or defend in his own name.

*The Bankruptcy Act, 1869, s. 111.*

(2.) Enumeration of powers which the trustee may exercise with the sanction of the committee of inspection.

*The Bankruptcy Act, 1869, s. 27.*

powers the trustee to sell all the property of the bankrupt including choses in action, such as book debts. Now legal choses in action were not formerly assignable, though the law has in this respect been amended by "The Judicature Act, 1873" (y). Consequently, in order that the assignment of such property should have legal effect, it was provided by "The Bankruptcy Act, 1869," that—

"Any person to whom anything in action belonging to the bankrupt is assigned in pursuance of this Act may bring or defend any action or suit relating to such thing in action in his own name."—32 & 33 Vict. c. 71, s. 111 (z).

(2.) In the *second* place we will indicate the powers which the trustee may exercise with the sanction of the committee of inspection. On this subject "The Bankruptcy Act, 1869," enacts that—

"The trustee may, with the sanction of the committee of inspection, do all or any of the following things :—

"(1.) Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts :

"(2.) Refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any debtor or person who may have incurred any liability to the bankrupt, upon the receipt of such sums, payable at such times, and generally upon such terms as may be agreed upon :

"(3.) Make such compromise or other arrangement as may be thought expedient with creditors or



“The sanction given for the purposes of this section may be a general permission to do all or any of the above-mentioned things, or a permission to do all or any of them in any specified case or cases.”—32 & 33 Vict. c. 71, s. 27.

### SECTION III.—DUTIES OF THE TRUSTEE IN BANKRUPTCY.

Before referring specifically to the various duties devolving upon a trustee in bankruptcy, it may be as well to point out generally that his faithful performance of them is, as far as possible, insured, by subjecting him to the control, not only of the committee of inspection (*a*), but also of an official called “The Comptroller in Bankruptcy” (*b*). On this subject, “The Bankruptcy Rules, 1870,” provide as follows:—

“The comptroller shall take cognizance of the conduct of trustees, and in the event of any trustee not faithfully performing his duties, and duly observing all the requirements imposed on him by statute, rules, or otherwise, relative to the performance of his duties, or in the event of any complaint being made to the comptroller by any creditor in regard thereto, he shall inquire into the same, and, if not satisfied with the explanation given, he shall report thereon to the Court, which after hearing the trustee may remove him from his office, or otherwise make such order in the matter as the justice of the case may require.”—“The Bankruptcy Rules, 1870,” r. 251.

In order that the comptroller may effectually acquit himself of his office he is empowered to require the trustee to answer any inquiry which he may think proper, from time to time, to put to him in relation to the bankruptcy, and may apply to the Court for the trustee’s examination upon oath. On this subject, “The Bankruptcy Act, 1869,” provides as follows:—

“The comptroller may at any time require any trustee to answer any inquiry made by him in relation to any bankruptcy in which such trustee is engaged, and may, if he think fit, apply to the Court to examine on oath such trustee or any other person concerning such bankruptcy; he may also direct a local investigation to be made of the books and vouchers of the trustees.”—32 & 33 Vict. c. 71, s. 58.

Let us now proceed to examine the various duties devolving upon a trustee in bankruptcy.

In pointing out such of the duties of a trustee in bankruptcy as can be separately dealt with, we will consider them in the following order:—(1.) Taking possession of the bankrupt’s property; (2.) Getting in the bankrupt’s outstanding property;

Comptroller to take cognizance of conduct of trustee, and to inquire into complaints against him.

*The Bankruptcy Rules, 1870, r. 251.*

Comptroller may require trustee to answer any inquiry addressed to him, and obtain order for his examination on oath.

*The Bankruptcy Act, 1869, s. 58.*

General enumeration of the duties of a trustee.

(*a*) *Ante*, p. 1370.

(*b*) *Ante*, p. 1273; and see *post*, 32 & 33 Vict. c. 71, s. 55.

(3.) Administration of the bankrupt's property ; (4.) Payment of monies received, by the trustee, into the bank ; (5.) The trustee's duty in regard to keeping books and rendering accounts.

(1.) Duty of trustee to take possession of bankrupt's property.

(1.) *First*, as regards the trustee's duty to take possession of the bankrupt's property.

We have already seen (*c*) how, on adjudication, the property of the bankrupt vests in the registrar, who, until the appointment of the trustee in bankruptcy, fills his place (*d*). And it has also been pointed out *what property* thus passes from the bankrupt to the registrar (*e*). It is, therefore, sufficient now to observe that *all* the property which, in the first instance, vests in the registrar, passes to the trustee in bankruptcy on his appointment (*f*).

The property of bankrupt to pass from trustee to trustee.

*The Bankruptcy Act, 1869, s. 83, sub-s. (6).*

When such property has *once* vested in the trustee, it passes from trustee to trustee, by virtue of his appointment. On this subject, "The Bankruptcy Act, 1869," provides as follows :—

"The property of the bankrupt shall pass from trustee to trustee, including under that term the registrar when he fills the office of trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment, or transfer whatever."—32 & 33 Vict. c. 71, s. 83, sub-sect. 6 (*g*).

As, therefore, the property of the bankrupt vests in the trustee on his appointment, it is his duty *to take possession* thereof.

Taking possession of the bankrupt's property by the trustee.

Accordingly the following provision of "The Bankruptcy Act, 1869," relates to the taking possession by the trustee of the bankrupt's property :—

"Where any portion of the property of the bankrupt consists of stock, shares in ships, shares, or any other property trans-

*The Bank*

“Where any portion of the property of the bankrupt consists of things in action, any action, suit, or other proceeding for the recovery of such things instituted by the trustee shall be instituted in his official name, as in this Act provided; and such things shall, for the purpose of such action, suit, or other proceeding, be deemed to be assignable in law, and to have been duly assigned to the trustee in his official capacity.

“The trustee shall, as soon as may be, take possession of the deeds, books, and documents of the bankrupt, and all other property capable of manual delivery. The trustee shall keep, in such manner as rules of Court shall direct, proper books, in which he shall from time to time make or cause to be made entries or minutes of proceedings at meetings, and of such other matters as rules of Court shall direct, and any creditor of the bankrupt may, subject to the control of the Court, personally or by his agent inspect such books.”—32 & 33 Vict. c. 71, s. 22.

The trustee may, however, disclaim in respect of onerous property. For “The Bankruptcy Act, 1869,” provides that:—

“When any property of the bankrupt acquired by the trustee under this Act consists of land of any tenure burdened with onerous covenants, of unmarketable shares in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the trustee, notwithstanding he has endeavoured to sell, or has taken possession of such property, or exercised any act of ownership in relation thereto, may, by writing under his hand, disclaim such property, and upon the execution of such disclaimer the property disclaimed shall, if the same is a contract, be deemed to be determined from the date of the order of adjudication, and if the same is a lease be deemed to have been surrendered on the same date, and if the same be shares in any company be deemed to be forfeited from that date, and if any other species of property it shall revert to the person entitled on the determination of the estate or interest of the bankrupt, but if there shall be no person in existence so entitled, then in no case shall any estate or interest therein remain in the bankrupt. Any person interested in any disclaimed property may apply to the Court, and the Court may, upon such application, order possession of the disclaimed property to be delivered up to him, or make such other order as to the possession thereof as may be just.

“Any person injured by the operation of this section shall be deemed a creditor of the bankrupt to the extent of such injury, and may accordingly prove the same as a debt under the bankruptcy” (*h*).—32 & 33 Vict. c. 71, s. 23.

Trustee may disclaim onerous property of bankrupt.

*The Bankruptcy Act, 1869, s. 23.*

(*h*) As to mode of *proof* under this section see *ante*, p. 1356 *et seq.*

“ The trustee shall not be entitled to disclaim any property in pursuance of this Act in cases where an application in writing has been made to him by any person interested in such property, requiring such trustee to decide whether he will disclaim or not, and the trustee has for a period of not less than twenty-eight days after the receipt of such application or such further time as may be allowed by the Court declined or neglected to give notice whether he disclaims the same or not.”—32 & 33 Vict. c. 71, s. 24.

Disclaimer of leasehold interests not to be executed without leave of Court.

*The Bankruptcy Rules, 1870, r. 28.*

With regard to the *disclaimer* by the trustee of *leasehold interests*, “ The Bankruptcy Rules, 1870,” provide as follows :—

“ Where any property of a bankrupt acquired by a trustee under ‘The Bankruptcy Act, 1869,’ shall consist of a leasehold interest, the trustee shall not execute a disclaimer of the same without the leave of the Court being first obtained for that purpose ; and upon any application to the Court for such leave, notice of the desire of the trustee to disclaim such interest shall be given to such person or persons as the Court shall direct, and such order shall be made thereon as the Court shall think fit.”—“ The Bankruptcy Rules, 1870,” r. 28.

(2.) Duty of trustee in regard to getting in outstanding property.

Power of Court on trustee’s application to summon before

(2.) *Secondly*, the duty of the trustee in regard to getting in the *outstanding* property of the bankrupt will now be considered.

It is the duty of the trustee in bankruptcy to get in the bankrupt’s property, with a view to its ultimate distribution amongst the creditors. In order that this duty may be duly fulfilled, it is necessary to ascertain what this property consists of, and in whose possession it is. Accordingly, as we have already seen (*i*), the bankrupt is obliged to produce a statement of his affairs, at the first meeting of creditors, containing

“rupt, his dealings or property; and if any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce such documents, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may, by warrant addressed as aforesaid, cause such person to be apprehended and brought up for examination” (k).—32 & 33 Vict. c. 71, s. 96.

The following rule of “The Bankruptcy Rules, 1870,” specifies the *form* in which an application under the above section is to be made:—

“Every application to the Court under section 96 of ‘The Bankruptcy Act, 1869,’ shall be in writing, and shall state shortly the grounds upon which the application is made and where the application is not made on behalf of the trustee, the grounds upon which the application is made shall be verified by affidavit.”—“The Bankruptcy Rules, 1870,” r. 171.

It is to be noticed that every application under section 96 is expressly required, by the above rule, to be in writing, and to state shortly *the grounds* of the application. And the above rule imposes the *additional* requirement of an affidavit of verification, whenever the application “*is not made on behalf of the trustee.*” This is somewhat remarkable, because there is nothing, in the section itself, to warrant the construction that the application in question *can* be made by any one *except the trustee in bankruptcy himself*.

At the hearing of the application the Court may examine upon oath the person brought before it, either by word of mouth or written interrogatories. On this subject “The Bankruptcy Act, 1869,” provides as follows:—

“The Court may examine upon oath, either by word of mouth or by written interrogatories, any person so brought before it in manner aforesaid concerning the bankrupt, his dealings or property.”—32 & 33 Vict. c. 71, s. 97.

Sometimes, at the hearing of the application, the person brought before the Court admits on examination that he is indebted to the bankrupt. When this happens, the following section of “The Bankruptcy Act, 1869,” applies:—

“If any person on examination before the Court admit he is indebted to the bankrupt, the Court may, on the application of the trustee, order him to pay to the trustee, at such time and in such manner as to the Court seems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without costs of the examination.”—32 & 33 Vict. c. 71, s. 98.

Mode of making application to the Court for summons.

*The Bankruptcy Rules*, 1870, r. 171.

Practice on application for summons.

Mode of examination by Court of persons so brought before it.

*The Bankruptcy Act*, 1869, s. 97.

Order of Court for payment of amount admitted on examination.

*The Bankruptcy Act*, 1869, s. 98.

(k) For Form of summons and warrant under this section see Appendix V. Forms Nos. 76 and 95.

**Forms of order.**

Bankrupt's books of account cannot be withheld from trustee or lien claimed in respect thereof.

*The Bankruptcy Rules, 1870, r. 110.*

Rights of the trustee in respect of goods of bankrupt trader taken in execution.

*The Bankruptcy Act, 1869, s. 87.*

A form of admission of debt by the debtor of a bankrupt is provided (*l*). And also a form of order to pay the admitted debt (*m*).

It is important to bear in mind that the trustee's right to the possession of the bankrupt's books of account cannot be defeated by a claim to any lien thereon. On this subject "The Bankruptcy Rules, 1870," provide as follows:—

"No person shall be entitled as against the trustee to withhold possession of the books of account of the bankrupt, or to claim any lien thereon."—"The Bankruptcy Rules, 1870," r. 110.

We must now call attention to a provision (which, however, only applies when the bankrupt was a *trader* at the institution of the bankruptcy proceedings (*n*)), whereby the trustee is sometimes entitled to the proceeds of the sale of goods of the bankrupt taken in execution. The provision in question is contained in the following section of "The Bankruptcy Act, 1869":—

"Where the goods of any trader have been taken in execution in respect of a judgment for a sum exceeding fifty pounds and sold, the sheriff, or in the case of a sale under the direction of the County Court, the high bailiff or other officer of the County Court, shall retain the proceeds of such sale in his hands for a period of fourteen days, and upon notice being served on him within that period of a bankruptcy petition having been presented against such trader, shall hold the proceeds of such sale, after deducting expenses, on trust to pay the same to the trustee; but if no notice of such petition having been presented be served on him within such period of fourteen days, or if, such notice having been served, the trader against whom the petition has been presented is

"agent of a bankrupt, shall pay and deliver to the trustee all monies and securities in his possession or power, as such officer or agent, if he be not by law entitled to retain as against the bankrupt or the trustee; if he do not he shall be guilty of a contempt of Court, and may be punished accordingly on the application of the trustee."—32 & 33 Vict. c. 71, s. 93.

If the trustee desires to make application under the above section he must file an affidavit in support thereof (*o*), and give a notice of application for a committal (*p*), with a view to obtaining an order of committal (*q*).

It not unfrequently occurs that a *secured creditor* petitions for adjudication. When this is the case, the trustee may, if he pleases, *within two months after the date of the order of adjudication*, require such secured creditor to give up his security upon the payment by the trustee of its estimated value. On this subject, "The Bankruptcy Rules, 1870," provide as follows:—

"Where an order of adjudication has been made upon the petition of a secured creditor, who has been admitted as the petitioning creditor to the extent of the balance of the debt due to him after deducting the amount estimated by the creditor, as the value of his security, he shall upon the application of the trustee, made within two months after the date of the order of adjudication, give up the security to the trustee upon the payment to him of the value so estimated, and where the trustee does not so apply within such term he shall be considered to have waived his right to redeem the security by payment of such estimated value."—"The Bankruptcy Rules, 1870," r. 117.

It is to be noticed that the above rule provides that if the trustee does not make the application in question, within the specified time, he shall be considered to have waived his right to redeem the security.

If the bankrupt be a beneficed clergyman, the trustee may, by means of a sequestration, obtain the profits of the benefice as part of the estate. "The Bankruptcy Act, 1869," provides as follows:—

"Where a bankrupt is a beneficed clergyman, the trustee may apply for a sequestration of the profits of the benefice, and the certificate of the appointment of the trustee shall be sufficient authority for the granting of sequestration without any writ or other proceeding, and the same shall accordingly be issued as on a writ of *levari facias* founded on a judgment against the bankrupt, and shall have priority over any other sequestration issued after the commencement of the bankruptcy, except a sequestration issued before the date of the

Practice on applications under above section.

Where petition in bankruptcy is presented by a secured creditor, trustee may, within prescribed time, redeem the security from such creditor, on payment of its estimated value, when the security itself must be delivered up to trustee.

*The Bankruptcy Rules, 1870, r. 117.*

Application must be within two months.

Sequestration of ecclesiastical benefice.

*The Bankruptcy Act, 1869, s. 88.*

(*o*) Appendix V. Form No. 85.

(*p*) Appendix V. Form No. 88.

(*q*) Appendix V. Form No. 91.

“ order of adjudication by or on behalf of a person who at the  
 “ time of the issue thereof had not notice of an act of bank-  
 “ ruptcy committed by the bankrupt, and available against him  
 “ for adjudication ; but the sequestrator shall allow out of the  
 “ profits of the benefice to the bankrupt, while he performs the  
 “ duties of the parish or place, such an annual sum, payable  
 “ quarterly, as the bishop of the diocese in which the benefice  
 “ is situate directs ; and the bishop may appoint to the bank-  
 “ rupt such or the like stipend as he might by law have ap-  
 “ pointed to a curate duly licensed to serve the benefice in  
 “ case the bankrupt had been non-resident.”—32 & 33 Vict.  
 c. 71, s. 88.

Appropriation  
 of portions  
 of pay of  
 officers to  
 creditors.

*The Bank-  
 ruptcy Act,*  
 1869, s. 89.

Moreover, the following section of “The Bankruptcy Act, 1869,” relates to the appropriation of any pay, half-pay, salary, emolument or pension to which the bankrupt may be entitled *as a past or present military or naval officer or civil servant of the Crown* :—

“ Where a bankrupt is or has been an officer of the army  
 “ or navy, or an officer or clerk or otherwise employed or  
 “ engaged in the civil service of the Crown, or is in the enjoy-  
 “ ment of any pension or compensation granted by the Treasury,  
 “ the trustee during the bankruptcy, and the registrar after  
 “ the close of the bankruptcy, shall receive for distribution  
 “ amongst the creditors so much of the bankrupt’s pay, half-  
 “ pay, salary, emolument, or pension as the Court, upon the  
 “ application of the trustee, thinks just and reasonable, to be  
 “ paid in such manner and at such times as the Court, with the  
 “ consent in writing of the chief officer of the department under  
 “ which the pay, half-pay, salary, emolument, pension, or com-  
 “ pensation is enjoyed, directs.”—32 & 33 Vict. c. 71, s. 89.

Form of

A form of order setting aside pay, &c., in pursuance of this



*military or naval officer, or as a civil servant of the Crown.* *The Bankruptcy Act, 1869, s. 90.* Where, however, the bankrupt is in the receipt of a salary or income "other than as aforesaid," its appropriation can be obtained by application of the trustee under the following section of "The Bankruptcy Act, 1869":—

"Where a bankrupt is in the receipt of a salary or income other than as aforesaid, the Court upon the application of the trustee shall from time to time make such order as it thinks just for the payment of such salary or income, or of any part thereof, to the trustee during the bankruptcy, and to the registrar, if necessary, after the close of the bankruptcy, to be applied by him in such manner as the Court may direct."  
—32 & 33 Vict. c. 71, s. 90.

A trustee in bankruptcy, making application under the above section, is required to give *notice* to the bankrupt of his intention (s). On this subject "The Bankruptcy Rules, 1870," provide as follows:—

"Where a trustee intends to apply to the Court for an order for payment by a bankrupt of a portion of his salary or income under section 90 of the Act, he shall give notice to the bankrupt of his intention, of the time and place fixed for the hearing of his application, and that the bankrupt is at liberty to attend and show cause against an order being made on the application."—"The Bankruptcy Rules, 1870," r. 181.

A form of order of appropriation under section 90 is provided (t).

On the bankrupt ceasing to receive the salary or income appropriated, he should apply, under the following rule of "The Bankruptcy Rules, 1870," to have the order of appropriation rescinded:—

"Where an order has been made for the payment by a bankrupt, or by his employer for the time being, of a portion of his income or salary, the bankrupt may, upon his ceasing to receive a salary or income of the amount he received when the order was made, apply to the Court to rescind the order, or to reduce the amount ordered to be paid by him to the trustee."—"The Bankruptcy Rules, 1870," r. 182.

The application to rescind an order, under the above circumstances, is the more necessary because the omission to pay the sum ordered may be visited by imprisonment. For "The Debtors Act, 1869," which abolishes imprisonment for debt, excepts from its operation the case of a person making default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which any Court having jurisdiction in bankruptcy is authorized to make an order (u).

Notice of application by trustee for appropriation of salary to be given.

*The Bankruptcy Rules, 1870, r. 181.*

Form of order.

Order directing appropriation will be rescinded if salary should cease.

*The Bankruptcy Rules, 1870, r. 182.*

(s) Appendix V. Form 78.

(t) Appendix V. Form 79.

(u) 32 & 33 Vict. c. 62, s. 9, see *ante*, p. 1306.

Bankrupt may be imprisoned for non-compliance with order.

*The Debtors Act, 1869, s. 4, sub-s. (5).*

(3.) Trustee's duty in regard to administration of bankrupt's property.

Trustee may appoint bankrupt to manage estate, &c.

Conduct of trustee in administering property.

*The Bankruptcy Act, 1869, s. 20.*

Although, generally speaking, a debtor is not now liable to be imprisoned for default in payment of a debt, it is however provided by "The Debtors Act, 1869," that, in the following case, imprisonment for debt, for a term not exceeding one year, shall be retained :—

"Default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which any Court having jurisdiction in bankruptcy is authorised to make an order."—32 & 33 Vict. c. 62, s. 4, sub-sect. 5.

(3.) *Thirdly*, as regards the trustee's duty in reference to the administration of the bankrupt's property.

It has already been stated (*x*) that the trustee may appoint the bankrupt himself to superintend the management of the property or of any part thereof, or to carry on the trade of the bankrupt (if any) for the benefit of the creditors, and in any other respect to aid in administering the property in such manner and on such terms as the creditors direct (*y*).

The trustee, however, usually himself undertakes the sole management of the bankrupt's property.

"The Bankruptcy Act, 1869," contains the following *general* provisions relative to the conduct of the trustee in administering the property of the bankrupt :—

"The trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting (*z*), or by the committee of inspection, and any directions so given by the creditors at any general meeting shall be deemed to override any directions given by the committee of inspection ; the trustee shall call a meeting of the committee of inspec-

“and the Court may confirm, reverse, or modify the act complained of, and make such order in the premises as it thinks just. The Court may from time to time, during the continuance of a bankruptcy, summon general meetings of the creditors for the purpose of ascertaining their wishes, and may, if the Court thinks fit, direct the registrar to preside at such meetings.

“The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position in all respects as if he were a receiver of such property appointed by the Court of Chancery, and the Court may on his application enforce such acquisition or retention of property accordingly.”—32 & 33 Vict. c. 71, s. 20.

It is to be observed that this section enables the trustee to apply to the Court for directions in relation to any particular matter arising under the bankruptcy. On this subject “The Bankruptcy Rules, 1870” (a), provide that:—

“Where a trustee desires to apply to the Court for directions in relation to any particular matter arising under the bankruptcy, he shall file his application according to the form in the schedule, and the Court shall then hear the application, or fix a day for its hearing, and direct the trustee to apply by motion.”—“The Bankruptcy Rules, 1870,” r. 112.

The trustee must, in the execution of his office, act in a disinterested manner. And as it frequently happens that he has to direct a sale of the property of the bankrupt, with a view to realising the assets, “The Bankruptcy Rules, 1870,” provide that:—

“Where the trustee is an auctioneer, he shall not by himself or any partner act as such in the sale of any of the property vested in him, except with the consent of the committee of inspection, and upon such terms as it may think fit.”—“The Bankruptcy Rules, 1870,” r. 119.

The trustee must apply any monies which may from time to time come into his hands, *first*, in paying certain debts which are directed to be paid in full, and, *secondly*, in paying dividends to the creditors in the mode which will be described in a subsequent chapter.

With regard to the debts which are to have priority and be paid in full, “The Bankruptcy Act, 1869,” enacts as follows:—

“The debts hereinafter mentioned shall be paid in priority to all other debts. Between themselves such debts shall rank equally, and shall be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they

How trustee may apply to Court for directions.

*The Bankruptcy Rules, 1870, r. 112.*

Trustee, if an auctioneer, not to act as such in sale of bankrupt's effects.

*The Bankruptcy Rules, 1870, r. 119.*

Application of monies in hand.

Certain debts to be paid in full and in priority.

Certain debts to be paid in priority to all other debts.

(a) For Form of application for directions, see Appendix V. Form 53; Form of Order thereon, Appendix V. No. 54.

With these exceptions, all debts provable to be paid *pari passu*.

*The Bankruptcy Act, 1869, s. 32.*

“shall abate in equal proportions between themselves ; that is to say,

“(1.) All parochial or other local rates due from him at the date of the order of adjudication, and having become due and payable within twelve months next before such time, all assessed taxes, land tax, and property or income tax, assessed on him up to the fifth day of April next, before the date of the order of adjudication, and not exceeding in the whole one year's assessment :

“(2.) All wages or salary of any clerk or servant in the employment of the bankrupt at the date of the order of adjudication, not exceeding four months wages or salary, and not exceeding fifty pounds ; all wages of any labourer or workman in the employment of the bankrupt at the date of the order of adjudication, and not exceeding two months wages :

“Save as aforesaid, all debts provable under the bankruptcy shall be paid *pari passu*” (b).—32 & 33 Vict. c. 71, s. 32.

The same statute, as already observed (c), establishes a preferential claim in the case of persons under apprenticeship to the bankrupt. Moreover, in the case of one partner of a firm being adjudged bankrupt, any creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts (d). And, by the 28 & 29 Vict. c. 86 (e), it is enacted that if any person to whom, when engaged or about to engage in any trade or

the sale by him of the good-will of such business, entitled to recover any such profits as aforesaid until the claims of the other creditors of the said trader, for valuable consideration in money or money's worth, have been satisfied.

(4.) *Fourthly*, as to the trustee's duty in regard to payment of monies from time to time received by him into the bank.

"The Bankruptcy Act, 1869," provides as follows :—

"The trustee shall pay all sums from time to time received by him into such bank as the majority of the creditors in number and value at any general meeting shall appoint, and failing such appointment into the Bank of England; and if he at any time keep in his hands any sum exceeding fifty pounds for more than ten days he shall be subject to the following liabilities; that is to say,

"(1.) He shall pay interest at the rate of twenty pounds per centum per annum on the excess of such sum above fifty pounds as he may retain in his hands :

"(2.) Unless he can prove to the satisfaction of the Court that his reason for retaining the money was sufficient, he shall, on the application of any creditor, be dismissed from his office by the Court, and shall have no claim for remuneration, and be liable to any expenses to which the creditors may be put by or in consequence of his dismissal."—32 & 33 Vict. c. 71, s. 30.

"The Bankruptcy Rules, 1870," on the same subject, provide as follows :—

"Where the creditors shall have failed to appoint the bank into which the trustee is to pay all moneys received by him, he shall pay them into such bank as the committee of inspection, or, when there is no committee, the Court shall appoint."—"The Bankruptcy Rules, 1870," r. 109 (*f*).

(5.) *Fifthly*, as to the trustee's duty in regard to (a.) the keeping of books and (b.) rendering of accounts—

The trustee in bankruptcy is required to keep certain books, as appears from the following rules of "The Bankruptcy Rules, 1870" :—

"The trustee shall keep a book to be entitled 'The Record,' according to the form in the schedule, in which he shall record all minutes, all proceedings had, and resolutions passed at any meeting of creditors, or of the committee of inspection, statement of bankrupt's affairs, reports and all proceedings necessary to give a correct view of the management of the bankrupt's property, but he shall not be bound to insert in the record any document of a confidential nature

(4.) Trustee's duty in regard to payment of monies into banks.

Trustees to pay monies into banks.

*The Bankruptcy Act, 1869, s. 30.*

(5.) Trustee's duty in regard to books and accounts.

Duty of trustee to keep books.

Trustee to keep a book called "The Record."

*The Bankruptcy Rules, 1870, r. 242.*

(*f*) See *post*, p. 1413, as to payment into bank by trustee of money in his hands after close of the bankruptcy.

Trustee to keep "The Estate Book." *The Bankruptcy Rules*, 1870, r. 243.

How Estate Book may be kept.

*The Bankruptcy Rules*, 1871, r. 13.

Inspection of the Record and Estate Books.

By whom Record and Estate Books may be inspected.

*Bank. Rules*, 1870, r. 244.

Submitting these books every quarter to the com-

mittee of

"(such as the opinion of counsel on any matter affecting the interest of the creditors), nor need he exhibit such document to any person other than the members of the committee of inspection."—"The Bankruptcy Rules, 1870," r. 242.

"The trustee shall also keep a book, to be entitled 'The Estate Book,' according to the form in the schedule, in which he shall enter from day to day the receipts and payments made by him" (g).—"The Bankruptcy Rules, 1870," r. 243.

A form of estate book is given in the schedule to "The Bankruptcy Rules, 1870," (h). It is not, however, necessary for the trustee to adopt this form, it being provided by "The Bankruptcy Rules, 1871," that :—

"The estate book referred to in Rule 243 of 'The Bankruptcy Rules, 1870,' may be kept in the form of an ordinary debtor and creditor account in lieu of the form prescribed by such rule."—"The Bankruptcy Rules, 1871," r. 13.

The record and estate books which, as we have just seen, the trustee is bound to keep, are liable to *inspection* by virtue of the following rule of "The Bankruptcy Rules, 1870":—

"The record and the estate book may be inspected by the committee of inspection and the creditors or their agents."—"The Bankruptcy Rules, 1870," r. 244.

Moreover, both the record and estate books are required to be submitted by the trustee to the committee of inspection, at the quarterly meeting held in pursuance of the Act. And, in addition, a copy of the estate book must at the same time be furnished by him. On this subject, "The Bankruptcy Rules, 1870," provide as follows :—

"The trustee shall submit the record and estate books, together with a copy of the latter, to the committee of inspec-

"copy so certified, adding thereto his certificate that it is the  
 "copy certified by the committee. He shall also forward there-  
 "with an office copy of the statement of affairs filed by the  
 "bankrupt, showing thereon in red ink the difference between  
 "the sums stated by the bankrupt and the sums realized or  
 "estimated by the trustee to be realized, and shall also state the  
 "reasons why any property not realized has not been realized."  
 —"The Bankruptcy Rules, 1870," r. 247.

Though the estate book alone appears liable to *audit*, yet a *local investigation* of all books kept by a trustee may be directed by the comptroller (*k*).

As to the duty of the trustee in regard to keeping and rendering accounts, it has already been seen (*l*) that the trustee in bankruptcy is required by section 20 of "The Bankruptcy Act, 1869," (*m*) to call a meeting of the committee of inspection once at least every three months. At such meeting the committee of inspection must audit the trustee's accounts, and determine whether any and what dividend is to be paid. Moreover, it is further provided by "The Bankruptcy Act, 1869," that the trustee in bankruptcy shall, after his quarterly statement of accounts has been audited by the committee of inspection, forward the certified statement to the comptroller in bankruptcy. The section imposing this duty is as follows :—

"The trustee having had his quarterly statement of accounts  
 "audited by the committee of inspection, shall, within the pre-  
 "scribed time, forward the certified statement in the prescribed  
 "form to an officer to be called the comptroller in bankruptcy,  
 "and if he fail to do so he shall be deemed guilty of a con-  
 "tempt of Court, to be punishable accordingly. The first and  
 "any subsequent comptroller shall be appointed by the Lord  
 "Chancellor, and hold office during his pleasure, and shall be  
 "paid such salary as the Lord Chancellor may, with the sanc-  
 "tion of the treasury, direct. The comptroller shall be pro-  
 "vided with such office in London, and with such officers,  
 "clerks, and servants, as may be directed by the Lord Chan-  
 "cellor, with the approval of the treasury. The officers, clerks,  
 "and servants in the office of the comptroller shall be appointed  
 "and dismissible by the comptroller, and there shall be allowed  
 "and paid to him such sum as the treasury may from time to  
 "time direct for the expenses of his office and of such clerks  
 "and other persons as may be deemed necessary by the  
 "treasury."—32 & 33 Vict. c. 71, s. 55.

In pursuance of the above section, and of section 20 of the Act, "The Bankruptcy Rules, 1871," provide as follows :—

"The trustee shall submit to the committee of inspection  
 "his bank pass book at the quarterly meeting required to be

Certified copy  
 of Estate Book  
 to be for-  
 forwarded by  
 trustee to  
 comptroller.

*The Bank-  
 ruptcy Rules,  
 1870, r. 247.*

Local investi-  
 gation of trust-  
 ee's books  
 may be  
 directed.

Duty of trust-  
 ee in regard  
 to keeping  
 and rendering  
 accounts.

Quarterly  
 accounts of  
 trustee duly  
 audited and  
 certified by  
 committee of  
 inspection to  
 be forwarded  
 to comptroller  
 in bankruptcy.

*The Bank-  
 ruptcy Act,  
 1869, s. 55.*

Trustee to sub-  
 mit his bank  
 pass book to  
 committee of  
 inspection at

(*k*) 32 & 33 Vict. c. 71, s. 58, *ante*, p. 1371.

(*l*) *Ante*, pp. 1380—1381.

(*m*) 32 & 33 Vict. c. 71, s. 20, *ante*, pp. 1380—1381.

quarterly meeting, and forward certified copy to comptroller.

*Bank. Rules, 1871, r. 14.*

At quarterly meeting, trustee to submit statement as to receipts and payments.

*Bank. Rules, 1871, r. 15.*

Trustee to file with registrar an affidavit where he has not received or paid any money on account of bankrupt's estate within a certain specified time.

*Bank. Rules, 1871, r. 16.*


Return of accounts to comptroller.

" held by section 20 of the Act, and shall forward to the comptroller a copy duly certified by the committee of all entries made therein since the previous audit."—"The Bankruptcy Rules, 1871," r. 14.

" Where the trustee has not since the date of his appointment, or since the last audit of his accounts, received or paid any sum of money on account of the bankrupt's estate, he shall at the quarterly meeting required by section 20 lay before the committee of inspection a statement to that effect, according to the form in the schedule (n); and such statement shall, if approved, be signed by the committee, and forthwith forwarded by the trustee to the comptroller."—"The Bankruptcy Rules, 1871," r. 15.

" Where there is no committee of inspection, and the trustee has not for a period of three months from the date of his appointment, or from the last audit of his accounts, received or paid any sum of money on account of the bankrupt's estate, he shall file with the registrar of the Court an affidavit to that effect, according to the form in the schedule (o), and shall forthwith forward an office copy of such affidavit to the comptroller. Where the registrar is trustee, he shall forward to the comptroller a certificate to the like effect."—"The Bankruptcy Rules, 1871," r. 16.

We have already seen how the trustee is obliged to forward his quarterly accounts to the comptroller after they have been audited by the committee of inspection. Lest, however, this periodical examination of accounts should not be sufficient, the trustee is further required, from time to time, and at least once a year, to transmit to the comptroller a statement in pursuance of the following section of "The Bankruptcy Act, 1869":—





"bankruptcy in which he is a trustee, and the comptroller shall cause the returns so made to be regularly bound up and preserved, according to alphabetical order of the Courts in which the proceedings were had, in volumes to be kept at all times in his office, with an index thereto framed by him, and which volumes may be searched by the public; and any trustee who shall fail to make such return may be removed from his office by the Court at the instance of any one creditor, or of the comptroller, or be subject to such order and to such costs as the Court may think proper to make."—"The Bankruptcy Rules, 1870," r. 250.

statement of every bankruptcy of which he is trustee.

*The Bankruptcy Rules, 1870, r. 250.*

The statements transmitted to the comptroller by the trustee must be examined by the former, and he may call the trustee to account if necessary. On this subject, "The Bankruptcy Act, 1869," provides as follows:—

Duty of comptroller to examine statements transmitted to him by trustee.

*The Bankruptcy Act, 1869, s. 57.*

"The comptroller shall examine the statements transmitted to him, and shall call the trustee to account for any misfeasance, neglect, or omission which may appear on such statements, and may require the trustee to make good any loss the estate of the bankrupt may have sustained by such misfeasance, neglect, or omission. If the trustee fail to comply with such requisition of the comptroller, the comptroller may report the same to the Court; and the Court, after hearing the explanation, if any, of the trustee, shall make such order in the premises as it thinks just."—32 & 33 Vict. c. 71, s. 57.

In pursuance of this section, "The Bankruptcy Rules, 1871," provide as follows:—

Course to be pursued where comptroller reports to County Court the failure of a trustee to comply with any requisition which such comptroller may have made to him.

*The Bankruptcy Rules, 1870, r. 9.*

"Where the comptroller in bankruptcy shall report to a County Court the failure of a trustee to comply with any requisition which may have been made on him by the comptroller under the provisions of section 57 of the Act, the registrar of the Court shall appoint a day for the trustee to attend the Court, four days notice whereof, according to the form in the schedule, shall be sent by post or otherwise by the registrar to the trustee, together with a copy of the comptroller's report, which copy shall be forwarded by the comptroller to the Court with the original report."—"The Bankruptcy Rules, 1870," r. 9.

It may be as well to mention in this place, that by a section of "The Bankruptcy Act, 1869," already set out (r), the comptroller is empowered to direct a local investigation of the books and vouchers of a trustee in bankruptcy.

Comptroller may direct a local investigation of books.

#### SECTION IV.—RELEASE OF THE TRUSTEE IN BANKRUPTCY.

The first thing to be done by the trustee, with a view to obtaining his release, is to apply to the comptroller for a report

Before calling meeting to consider ap-

plication for his release, trustee to obtain comptroller's report on his accounts.

*The Bankruptcy Rules, 1870, r. 248.*

Trustee to apply to registrar to fix time and place of meeting at which his release is to be considered.

*The Bankruptcy Rules, 1870, r. 122.*

Summoning of the meeting for release of the trustee.

Proceedings at meeting for release of the trustee.

on his accounts. On this subject "The Bankruptcy Rules, 1870," provide as follows :—

"Every trustee, before calling a meeting of the creditors to consider an application to be made by him to the Court for his release, shall apply to the comptroller for a report on his accounts, and the comptroller shall make such report and transmit it to the trustee, who shall produce the same at such meeting and to the Court when making such application" (s). —"The Bankruptcy Rules, 1870," r. 248.

Having obtained from the comptroller a report on his accounts, the next thing to be done by the trustee is to apply to the registrar to fix the time and place upon which he may make application to the Court for his release. "The Bankruptcy Rules, 1870," on this subject, provide as follows :—

"A trustee desirous of obtaining his release shall apply to the registrar to fix the time and place upon which he may make application to the Court for such release, and upon such time being fixed he shall summon a meeting of the creditors to consider such application, stating therein the time and place on which the application to the Court will be made."—"The Bankruptcy Rules, 1870," r. 122.

As prescribed by this rule, as soon as the registrar has fixed the time and place upon which the application to the Court may be made, the trustee proceeds to summon a meeting of the creditors to consider such application, stating the time and place in which the application to the Court will be made.

With regard to this meeting of creditors, and the subsequent action by the creditors who are opposed to the release, "The Bankruptcy Act, 1869," provides as follows :—

"When the bankruptcy is closed the trustee shall call a meet-

"consequences of any act or default he may have done or made contrary to his duty, and shall suspend his release until such charging order has been complied with, and the Court thinks just to grant the release of the trustee."—32 & 33 Vict. c. 71, s. 51.

It is to be noticed that this section provides that the trustee shall, at the meeting in question, lay before the assembled creditors an account showing the manner in which the bankruptcy has been conducted, with a list of unclaimed dividends, if any, and of the outstanding property, if any. He must, moreover, produce at this meeting the comptroller's report on his accounts, which we have seen he must provide himself with before summoning the meeting. On this subject "The Bankruptcy Rules, 1870," provide, further, as follows :—

"A trustee applying for a release shall produce to the meeting of creditors a report from the comptroller upon his accounts."—"The Bankruptcy Rules, 1870," r. 123.

The trustee at the meeting of creditors states that he proposes to apply to the Court for a release, and, indeed, in summoning the meeting, he must state the time and place of application to the Court (*t*).

The creditors may, as we have seen (*u*), oppose the trustee's application for a release, and the Court will grant or withhold this release accordingly (*x*).

Forms of application to the Court for a release and of order thereon are provided (*y*).

As regards *the effect* of the order releasing the trustee, "The Bankruptcy Act, 1869," provides as follows :—

"The order of the Court releasing the trustee of a bankruptcy shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as trustee of such bankrupt; but such order may be revoked by the Court on proof that it was obtained by fraud."—32 & 33 Vict. c. 71, s. 53.

On the same subject "The Bankruptcy Rules, 1870," provide as follows :—

"The release of a trustee shall operate as a removal of the trustee, and thereupon the registrar shall be the trustee."—"The Bankruptcy Rules, 1870," r. 124.

A trustee when he is released is required to deliver over to the registrar of the Court all books kept by him. On this subject "The Bankruptcy Rules, 1870," provide as follows :—

Trustee applying for his release to produce at meeting comptroller's report upon his accounts.

*The Bankruptcy Rules, 1870, r. 123.*

Trustee must inform meeting of proposed time and place of application to Court for release.

Proceedings on application.

Forms of order of release.

Effect of release of trustee.

*The Bankruptcy Act, 1869, s. 53.*

Release of trustee to operate as his removal.

*The Bankruptcy Rules, 1870, r. 124.*

When trustee vacates his office all docu-

(*t*) Rule 122, *ante*, p. 1388.

(*u*) *Ante*, p. 1388.

(*x*) 32 & 33 Vict. c. 71, s. 51, *ante*, p. 1388.

(*y*) Appendix V. Form 60.

ments relating  
to bankruptcy  
to be delivered  
by him to  
registrar.

*The Bank-  
ruptcy Rules,*  
1870, r. 249.

“Upon a trustee resigning, or being released or removed from, his office, he shall deliver over to the registrar of the Court all books kept by him and all other books, documents, papers, and accounts in his possession in any way relating to the office of trustee.”—“The Bankruptcy Rules, 1870,” r. 249.

## BOOK VI.

### THE JURISDICTION AND PRACTICE IN BANKRUPTCY.

#### CHAPTER XIII.

##### THE PUBLIC EXAMINATION OF THE BANKRUPT.

EVERY bankrupt is required to pass a public examination ; this requirement being imposed by a section of "The Bankruptcy Act, 1869" (*a*), which has already been set out in full, and which (on the subject of the present chapter) enacts as follows :—

Every bankrupt publicly examined.

"The bankrupt shall . . . . produce a statement of his affairs to the first meeting of creditors, and shall be publicly examined thereon on a day to be named by the Court, and subject to such adjourned public examination as the Court may direct. . . ."—82 & 83 Vict. c. 71, s. 19.

*The Bankruptcy Act, 1869, s. 19.*

Moreover, a rule (*b*), also already set out in full on another page, prohibits the public examination of a bankrupt being held at chambers (*b*).

Public examination cannot be at chambers.

The time and place of public examination is fixed by the registrar ; it is usually so fixed at the first meeting of creditors, but may be fixed at any other time ; and it cannot take place later than forty days after the first meeting of creditors (*c*).

Fixing time and place for public examination.

Notice of the day fixed for the bankrupt's public examination must be given in the Gazette, and in one local newspaper at least, and must also be sent by the trustee to each creditor (*d*).

Notice of appointment to be given.

The bankrupt is bound to attend the public examination, and if he fails to do so he may be arrested under section 96 of the Act (*e*), unless he can show good cause for his failure to attend.

Attendance of bankrupt.

(*a*) See *ante*, pp. 1338—1339.

(*b*) Rule 5 of "Bankruptcy Rules, 1870," set out *ante*, p. 1266.

(*c*) See Rule 96 of "Bankruptcy Rules, 1870," set out in full, *ante*, p. 1349.

(*d*) See Rule 111 of "The Bankruptcy Rules, 1870," set out in full, *ante*, p. 1364.

(*e*) Set out in full, *ante*, pp. 1374—1375.

**Proceedings  
at public  
examination.**

The public examination must be conducted *vis à vis* if the trustee requires it (*f*). Should the bankrupt's statement of affairs be insufficient, an adjournment of the public examination must take place (*g*).

(*f*) *Ex parte Crump; In re Hendry*, L. R. 1 Ch. Div. 530; 45 Law J. Bankruptcy, 98; 34 L. T. N. S. 12; 24 W. R. 557.

(*g*) *Ex parte Milne; In re Denton*, L. R. 8 Ch. App. 559; 21 W. R. 436; 28 L. T. N. S. 175.

## BOOK VI.

### THE JURISDICTION AND PRACTICE IN BANKRUPTCY.

#### CHAPTER XIV.

##### THE DECLARATION AND PAYMENT OF DIVIDENDS.

IN discussing the subject of dividends it will be most convenient to consider—(1.) The declaration of a dividend; (2.) To whom dividends are to be transmitted, and in what order debts are to be paid; (3.) How payment of a dividend may be compelled; (4.) Mode of transmission of dividends; (5.) Unclaimed dividends.

Arrangement  
of the subject.

(1.) *First*, as regards the declaration of a dividend.

(1.) The declaration of a dividend.

The assets of a bankrupt are distributed amongst the creditors, from time to time, in the form of a dividend, which is declared by the trustee, with the sanction of the committee of inspection (*a*).

Nature of  
dividends.

A dividend which does *not* exhaust all the assets, and which is intended to be followed by another dividend, to be subsequently declared, is called an *interim* dividend. While, the last dividend declared, is called the *final* dividend (*b*).

The following section of "The Bankruptcy Act, 1869," relates to the declaration of *interim* dividends:—

*Interim* dividend to be from time to time declared by trustee.

"The trustee shall from time to time, when the committee of inspection determines, declare a dividend amongst the creditors who have proved to his satisfaction debts provable in bankruptcy, and shall distribute the same accordingly; and in the event of his not declaring a dividend for the space of six months, he shall summon a meeting of the creditors, and explain to them his reasons for not declaring the same."—32 & 33 Vict. c. 71, s. 41.

*The Bankruptcy Act, 1869, s. 41.*

In the declaration and distribution of a dividend the trustee must be careful to bear in mind the debts of creditors who reside at a distance and have not yet had time to prove, and he

In calculating dividend, trustee to

(*a*) 32 & 33 Vict. c. 71, s. 41, *infra*.  
(*b*) *Ib.*, s. 44, *post*, p. 1396.

make allowance for debts of creditors residing at a distance.

*The Bankruptcy Act, 1869, s. 42.*

Dividends on joint and separate properties to be declared together and expenses to be fairly apportioned.

*The Bankruptcy Act, 1869, s. 104.*

Where joint estate cannot bear its own costs or charges, Court may order payment out of separate estates.

*The Bankruptcy Rules, 1870, r. 113.*

Notice of intention to declare a dividend to be given to creditors and gazetted.

must likewise make allowance for claims not yet determined. On this subject "The Bankruptcy Act, 1869," provides as follows :—

"In the calculation and distribution of a dividend it shall be obligatory on the trustee to make provision for debts provable in bankruptcy appearing from the bankrupt's statements, or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them if disputed, and also for debts provable in bankruptcy, the subject of claims not yet determined."—32 & 33 Vict. c. 71, s. 42.

Where *joint* and *separate* properties are being administered, the dividends on both properties should be declared together. This is provided by the following section of "The Bankruptcy Act, 1869":—

"Where joint and separate properties are being administered, dividends of the joint and separate properties shall, subject to any order to the contrary that may be made by the Court on the application of any person interested, be declared together; and the expenses of and incident to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property."—32 & 33 Vict. c. 71, s. 104.

It is to be noticed that this section provides that expenses of and incident to such dividends shall be fairly apportioned between the two properties. Where, however, one estate cannot pay the costs and charges necessarily incurred in respect of the same, they have to be borne by the other estate. On this subject "The Bankruptcy Rules, 1870," provide as follows :—

"In case any joint estate of any bankrupts shall be insufficient to pay any costs or charges necessarily incurred in respect of the same, the Court on application of the trustee may order such costs to be paid out of the separate estates of such bankrupts, or one or any of them; and vice versa may order costs necessarily incurred for any separate estate, if the same were incurred with reasonable probability of benefit to the joint estate, to be paid out of such joint estate."—"The Bankruptcy Rules, 1870," r. 113.

Before declaring a dividend, the trustee must give reasonable notice thereof to such of the creditors, mentioned in the bankrupt's statement, as have not yet proved. This notice must, moreover, be gazetted. On this subject "The Bankruptcy Rules, 1870," provide as follows :—

"Where a dividend is intended to be declared, the trustee shall give reasonable notice thereof to such of the creditors, mentioned in the bankrupt's statement, as shall not have



“proved their debts, and the notice shall also be gazetted” (c).  
—“The Bankruptcy Rules, 1870,” r. 131.

*The Bankruptcy Rules, 1870, r. 131.*

A form of notice in *Gazette* of intended declaration of dividend is contained in schedule to “Bankruptcy Rules, 1871.”

When the dividend has actually been declared, notice thereof must be gazetted, and also a notice sent to each creditor who has proved.

On this subject, “The Bankruptcy Rules, 1870,” provide as follows:—

Notice of declaration of dividend to be gazetted.

“Notice of a dividend having been declared shall be gazetted by the trustee according to the form in the schedule, and he shall also send a notice to each creditor who has proved, showing the amount of the dividend, and when and where it is payable.”—“The Bankruptcy Rules, 1870,” r. 132.

*The Bankruptcy Rules, 1870, r. 132.*

A form of notice of declared dividend is contained in schedule to “Bankruptcy Rules, 1871” (d).

The trustee is also required, upon the declaration of a dividend, to transmit to the comptroller a list of creditors who have proved in accordance with the following rule of “The Bankruptcy Rules, 1871”:—

When dividend declared, trustee to send to comptroller list of creditors who have proved.

“Upon the declaration of a dividend a trustee shall send to the comptroller a list of creditors who have proved, showing the amount of proofs and dividends.”—“The Bankruptcy Rules, 1871,” r. 17.

*The Bankruptcy Rules, 1871, r. 17.*

As already stated dividends are declared from time to time until the available assets are exhausted and the debts liquidated. Ultimately a *final* dividend is declared, as provided by the following section of “The Bankruptcy Act, 1869”:—

When the trustee should declare a final dividend.

“When the trustee has converted into money all the property of the bankrupt, or so much thereof as can, in the joint opinion of himself and of the committee of inspection, be realized without needlessly protracting the bankruptcy, he shall declare a final dividend, and give notice of the time at which it will be distributed.”—32 & 33 Vict. c. 71, s. 44.

*The Bankruptcy Act, 1869, s. 44.*

(2.) *Secondly*, let us see to whom dividends must be transmitted, and in what order debts are to be paid.

(2.) To whom dividends must be transmitted and the order of payment.

All the creditors who have proved *before* the declaration of a dividend are entitled to participate in the distribution (e). As regards creditors who have *not* proved *before* the declaration of a dividend, “The Bankruptcy Act, 1869,” provides as follows:—

Rights of a creditor proving *after* declaration of a dividend.

“Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any monies for the time being in the hand of the trustee any dividend or dividends he may have failed to

*The Bankruptcy Act, 1869, s. 43.*

(c) Appendix V. Form 49.

(d) Appendix V. Form 3. By some omission no form of notice was provided in schedule to “The Bankruptcy Rules, 1870.”

(e) *Ante*, p. 1393.

make allowance for debts of creditors residing at a distance.

*The Bankruptcy Act, 1869, s. 42.*

Dividends on joint and separate properties to be declared together and expenses to be fairly apportioned.

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Where joint estate cannot bear its own costs or charges, Court may order payment out

must likewise make allowance for claims not yet determined. On this subject "The Bankruptcy Act, 1869," provides as follows :—

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*The Bankruptcy Act, 1869, s. 43.*

(e) Appendix V. Form 49.

(d) Appendix V. Form 3. By some omission no form of notice was provided in schedule to "The Bankruptcy Rules, 1870."

(e) *Ante*, p. 1393.

“ receive before such monies are made applicable to the payment  
 “ of any future dividend or dividends, but he shall not be en-  
 “ titled to disturb the distribution of any dividend declared  
 “ before his debt was proved by reason that he has not partici-  
 “ pated therein.”—32 & 33 Vict. c. 71, s. 43.

Negotiable  
 securities upon  
 which proof  
 has been made  
 to be exhibited  
 to trustee upon  
 payment of  
 dividend.

*Bank. Rules,*  
 1870, r. 134.

Course to be  
 pursued by  
 creditor who  
 wishes to give  
 credit for  
 value of his  
 security and  
 to receive a  
 dividend in  
 respect of  
 balance of his  
 debt after  
 deducting  
 the assessed  
 value.

*Bank. Rules,*  
 1870, r. 136.

The order of  
 payment of  
 debts.

The following rules of “The Bankruptcy Rules, 1870,” relate to the payment of dividends to *secured* creditors:—

“ All bills of exchange or other negotiable securities upon  
 “ which proof has been made must be exhibited to the trustee  
 “ before payment of dividend.”—“The Bankruptcy Rules,  
 1870,” r. 134.

“ A creditor who is desirous of giving credit for the value of  
 “ his security in order to entitle him to a dividend in respect  
 “ of the balance of his debt after deducting the assessed value,  
 “ shall give notice thereof to the trustee, and the value of his  
 “ security shall be determined in the same manner as the value  
 “ of the security is to be determined, as prescribed with refer-  
 “ ence to the balance upon which a secured creditor may vote,  
 “ and such creditor shall give credit for the value within four-  
 “ teen days after he shall be called upon by the trustee so to do,  
 “ unless he shall be out of England, and then within such rea-  
 “ sonable time as the trustee may fix, having regard to the  
 “ means of communication between England and the place  
 “ where the creditor may be, and in default thereof shall be  
 “ deemed to be fully secured. If the trustee or any other  
 “ creditor shall be dissatisfied with the value put on the se-  
 “ curity, the trustee may require the security to be realized.”  
 —“The Bankruptcy Rules, 1870,” r. 136.

Having ascertained to whom dividends are to be trans-  
 mitted, it becomes necessary to determine in what order debts  
 are to be paid. The provisions of “The Bankruptcy Act,

The mode of making the application is indicated by the following rule of "The Bankruptcy Rules, 1870" :—

"A creditor may apply for the payment of a dividend withheld by a trustee by sending or giving to the registrar and the trustee a notice according to the form in the schedule, and the Court may, if it shall see fit, make an order upon such application for the payment of the dividend without requiring the attendance of the creditor thereat."—"The Bankruptcy Rules, 1870," r. 135.

A form of application under this rule is provided (*f*).

(4.) *Fourthly*, as to the mode of transmission of dividends.

If a creditor does not choose to attend and receive the money in person or by proxy, it will be transmitted to him at his own risk. On this subject, "The Bankruptcy Rules, 1870," provide as follows :—

"The amount of the dividend may, at the risk of the creditor, be transmitted to a creditor by registered post letter, enclosing a cheque or post-office order, less the cost of remittance, upon his returning the notice to the trustee with the receipt attached to it duly signed, or it shall be paid upon the production of the notice and the receipt to the trustee at the time mentioned in the notice."—"The Bankruptcy Rules, 1870," r. 133.

(5.) *Fifthly*, as to *unclaimed dividends and outstanding property*.

It sometimes happens that, for one reason or another, the dividends declared are not all claimed. These may be claimed by the creditors, *within five years*. But, after the expiration of this period, the dividends are vested in the Crown. The provisions in "The Bankruptcy Act, 1869," on this subject, are as follow :—

"Unclaimed dividends, and any other monies arising from the property of the bankrupt, remaining under the control of the trustee at the close of the bankruptcy of any bankrupt, or accruing thereafter, shall be accounted and paid over to such account as may be directed by the rules of Court to be made with the sanction of the treasury ; and any parties entitled thereto may claim the same in manner directed by such rules. The trustee shall also deliver a list of any outstanding property of the bankrupt to the prescribed persons, and the same shall, when practicable, be got in and applied for the benefit of the creditors in manner prescribed."—32 & 33 Vict. c. 71, s. 52.

"Where any dividends remain unclaimed for five years, then and in every such case the same shall be deemed vested in the Crown, and shall be disposed of as the Commissioners of Her Majesty's Treasury direct ; provided that at any time after

Mode of applying to Court for such an order.

*The Bankruptcy Rules, 1870, r. 135.*

(4.) Mode of transmission of dividends. Different modes of transmitting dividends.

*The Bankruptcy Rules, 1870, r. 133.*

(5.) Unclaimed dividends and outstanding property.

How unclaimed dividends are to be dealt with.

*The Bankruptcy Act, 1869, s. 52.*

Disposition of dividends which remain unclaimed for five years.

*The Bankruptcy Act, 1869, s. 116.*

“such vesting the Lord Chancellor or any Court authorised by him may by reason of the disability or absence beyond seas of the person entitled to the sum so vested, or for any other reason appearing to him sufficient, direct that the said sum shall be repaid out of money provided by Parliament.”—82 & 83 Vict. c. 71, s. 116.

List of unclaimed dividends to be forwarded by trustee to comptroller.

*The Bankruptcy Rules, 1870, r. 18.*

Not later than twelve months from the declaration of a dividend the trustee is required to forward to the comptroller a list of unclaimed dividends, and also vouchers for such dividends as have been paid. The comptroller then sends to the trustee an order by the accountant in bankruptcy upon the Bank of England to receive the amount of unclaimed dividends, and the trustee within a week from the date of such order, must pay the sum mentioned therein into the Bank of England. On this subject, “The Bankruptcy Rules, 1871,” provide as follows:—

“At the expiration of twelve months from the declaration of such dividend, or if the bankruptcy be closed within twelve months of such declaration, then at the close of the bankruptcy, the trustee shall forward to the comptroller a list of the dividends unclaimed, together with vouchers showing the payment of such dividends as have been paid.”—“The Bankruptcy Rules, 1870,” r. 18.

Upon receipt of list, comptroller to send order on Bank of England to receive amount of unclaimed dividends.

“Upon the receipt of such list the comptroller shall send to the trustee an order by the accountant in bankruptcy upon the Bank of England to receive the amount of the dividends which remain unclaimed, and the trustee shall within one week from the date of such order pay into the Bank of England the sum mentioned in such order.”—“The Bankruptcy Rules, 1870,” r. 19.

The trustee is also required to forward to the registrar of

## BOOK VI.

### THE JURISDICTION AND PRACTICE IN BANKRUPTCY.

#### CHAPTER XV.

##### MEETING OF CREDITORS SUBSEQUENT TO THE FIRST MEETING.

It has already been seen (*a*) that "The Bankruptcy Act, 1869," provides that "the trustee may, from time to time, summon general meetings of the creditors for the purpose of ascertaining their wishes" (*b*).

The Court, also, may, from time to time, summon a meeting. On this subject, "The Bankruptcy Act, 1869," provides as follows:—

"The Court may, from time to time, during the continuance of a bankruptcy, summon general meetings of the creditors for the purpose of ascertaining their wishes, and may, if the Court thinks fit, direct the registrar to preside at such meetings."—32 & 33 Vict. c. 71, s. 20 (*c*).

A creditor may also summon a meeting. But, before doing so, a creditor should remember that Rule 102 of "The Bankruptcy Rules, 1870," (*d*) renders him liable for the costs of such meeting, unless the Court otherwise order.

A member of a committee of inspection may summon a meeting of his own accord (*e*), or if the object be for the purpose of removing a trustee in bankruptcy or a member of a committee of inspection, he may summon a meeting of creditors at the request of any one or more of such creditors (*f*).

As regards the costs of general meetings, "The Bankruptcy Rules" provide:—

"The costs of summoning a meeting of creditors by any person other than the trustee shall be paid by the person at

Meeting of creditors may be summoned by trustee.

General meetings of creditors may be summoned by Court from time to time.

*The Bankruptcy Act, 1869, s. 20.*

Creditor may summon a general meeting.

A member of committee of inspection may summon general meeting.

By whom costs of summoning a meeting to be paid.

(*a*) *Ante*, p. 1380.

(*b*) Sect. 20, *ante*, pp. 1380—1381.

(*c*) See this section set out in full, *ante*, pp. 1380—1381.

(*d*) Set out *infra*.

(*e*) 32 & 33 Vict. c. 71, s. 21, *post*, p. 1401.

(*f*) "Bankruptcy Rules, 1870," Rule 120, *ante*, pp. 1365—1366.

*The Bankruptcy Rules, 1870, r. 102.*

**Mode of summoning a general meeting.**

—If called by the trustee.

*The Bankruptcy Rules, 1870, r. 95.*

—If called to propose a composition or an arrangement.

**Forms of notice of meeting to accept composition or arrangement.**

—If called by order of

“ whose instance it is summoned, to be repaid to him out of the estate if the trustee, or the committee of inspection, or the Court shall so direct.”—“ The Bankruptcy Rules, 1870,” r. 102.

The *mode* of summoning a general meeting is as follows :—

Where the meeting is summoned by the trustee, he sends a notice thereof to each creditor. On this subject, “ The Bankruptcy Rules, 1870,” provide as follows :—

“ Where a meeting of creditors is summoned by a trustee, it shall be summoned by the trustee transmitting to each creditor at the address given in his proof, or when he shall not have proved, the address given in the list of creditors by the bankrupt, or such other address as may be known to the trustee, seven days before the meeting is to be held, a notice setting forth the time and place at which it is to be held, and the purpose for which it is summoned.”—“ The Bankruptcy Rules, 1870,” r. 95.

Any notice summoning a meeting for the purpose of inducing the creditors to accept a composition or general scheme of arrangement must specify the object of such meeting (*g*).

Forms of notice in the *Gazette* of a meeting to authorise the trustee to accept a composition (*h*) ; of an application to annul adjudication under this section (*i*) ; of an order annulling adjudication (*k*) ; of an affidavit of a person interested in a composition for a committal (*l*) ; of a notice of application for a committal (*m*) ; of an order of committal (*n*) ; of an application for enforcement of provision in a composition (*o*) ; of an affidavit in support of such last-named application (*p*) ; and of an order for enforcement of provisions in a composition (*q*), are provided.

Where a meeting is summoned by order of the Court, the mode of summoning it is regulated by the following rule of



"at the address given in his proof, or when he shall not have proved, the address given in the list of creditors by the bankrupt, or such other address as may be known to the trustee."—"The Bankruptcy Rules, 1870," r. 11.

A form of order summoning a general meeting of creditors is provided (r).

Form of order calling meeting.

As regards what shall be sufficient evidence of sending a notice convening a meeting, "The Bankruptcy Rules, 1870," provide as follows:—

Proof of sending notices convening a meeting.

"An affidavit by a trustee, or an officer of the Court, or by any clerk of either, that letters have been put into a post-office, shall be sufficient evidence of such notices having been duly sent to the persons to whom the same purport to have been addressed."—"The Bankruptcy Rules, 1870," r. 98.

*The Bankruptcy Rules, 1870, r. 98.*

It is provided, by the following rule of "The Bankruptcy Rules, 1870," that though *some* of the creditors may not have received notice of a meeting, the proceedings thereat shall not be invalidated:—

Proceedings at meeting not invalidated because some creditors received no notice of same.

"Wherever a meeting of creditors is called by notice, the proceedings had, and resolutions come to at such meeting, shall be valid, notwithstanding that some creditors shall not have received the notice sent to them, unless otherwise ordered by the Court."—"The Bankruptcy Rules, 1870," r. 97.

*The Bankruptcy Rules, 1870, r. 97.*

The regulation as to the proceedings at general meetings of creditors are as follow. "The Bankruptcy Act, 1869," provides:—

Regulation of proceedings at meetings of creditors.

"The provisions of this Act with respect to the first general meeting of creditors (s) shall apply to any subsequent general meeting of creditors in a bankruptcy, with this exception, that subsequent meetings of creditors may be summoned by the trustee, or by a member of the committee of inspection, and that such meetings may, unless otherwise directed by the Court, in the case of meetings summoned by the Court, be presided over by any person chosen by the creditors assembled at such meeting, and that any creditor whose debt has been proved, or the value of whose debt has been ascertained at or subsequently to such first meeting, shall be allowed to be present and to vote thereat."—32 & 33 Vict. c. 71, s. 21.

*The Bankruptcy Act, 1869, s. 21.*

In the event of any resolutions being passed at a meeting of creditors, it is provided that a certified copy thereof shall be forwarded by the trustee to the registrar. On this subject, "The Bankruptcy Rules, 1870," provide as follows:—

Certified copy of every resolution passed at a meeting of creditors to be sent to registrar by the trustee.

"The trustee in every bankruptcy shall send to the registrar of the Court in which such bankruptcy is pending a copy certified by him of every resolution of a meeting of creditors,

(r) Appendix V. Form 30.

(s) See sect. 16, *ante*, p. 1342—1343.

*The Bankruptcy Rules, 1870, r. 75.*

"and shall also, on the first day of every month, send to the registrar a certified list of all proofs, if any, tendered during the month next preceding, distinguishing in such list the proofs admitted, those rejected, and such as stand over for further consideration."—"The Bankruptcy Rules, 1870," r. 75.

Business which may be transacted at any general meeting.

With reference to the business capable of being transacted at general meetings of creditors, one or two observations may now be made.

—Creditors may prove.

A creditor may prove his debt at any meeting of creditors duly summoned (*t*).

—Trustees or committee of inspection may be removed, &c.

A trustee or a member of a committee of inspection may be removed, and the vacancies, so caused, filled up at any meeting of creditors (*u*). As has already been pointed out, "The Bankruptcy Act, 1869," provides that if any vacancy occur in the office of trustee by death, resignation, or otherwise, the creditors in general meeting shall fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing trustee, if there be more than one, or by the registrar on the requisition of any creditor (*x*).

—Resolutions giving trustee directions may be passed.

Speaking generally, the creditors may, at a general meeting, pass resolutions regulating the conduct of the trustee. For "The Bankruptcy Act, 1869," provides that "the trustee shall in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors have regard to any directions that may be given by resolution of the creditors at any general meeting" (*y*).

Composition or a general scheme of arrangement may be accepted.

As already pointed out, the creditors may, at any meeting of which proper notice has been given, accept a composition or a general scheme of arrangement. This must not, however, be confounded with composition *without any bankruptcy proceedings being taken*, of which we shall have to treat later on (*z*).

Power of trustee to accept composition or general scheme of arrangement with sanction of creditors.

In reference to the former kind of composition, "The Bankruptcy Act, 1869," enacts that:—

*The Bankruptcy Act, 1869, s. 28.*

"The trustee may, with the sanction of a special resolution of the creditors assembled at any meeting of which notice has been given specifying the object of such meeting, accept any composition offered by the bankrupt, or assent to any general scheme of settlement of the affairs of the bankrupt, upon such terms as may be thought expedient, and with or without a condition that the order of adjudication is to be annulled, subject nevertheless to the approval of the Court, to be testified by the Judge of the Court signing the instrument containing the terms of such composition or scheme, or embodying such terms in an order of the Court.

(*t*) Rule 67, *ante*, p. 1356.

(*u*) Rule 120, *ante*, pp. 1365—1366.

(*x*) 32 & 33 Vict. c. 71, s. 83, sub-sect. (2).

(*y*) *Ib.*, s. 20, *ante*, p. 1380—1381.

(*z*) See *post*, pp. 1424 *et seq.*

“ Where the annulling the order of adjudication is made a  
“ condition of any composition with the bankrupt or of any  
“ general scheme for the liquidation of his affairs, the Court,  
“ if it approves of such composition or general scheme, shall  
“ annul the adjudication, on an application made by or on  
“ behalf of any person interested, and the adjudication shall be  
“ annulled from and after the date of the order annulling the  
“ same.

“ The provisions of any composition or general scheme made  
“ in pursuance of this Act may be enforced by the Court on a  
“ motion made in a summary manner by any person interested,  
“ and any disobedience of the order of the Court made on such  
“ motion shall be deemed to be a contempt of Court. The  
“ approval of the Court shall be conclusive as to the validity of  
“ any such composition or scheme, and it shall be binding on  
“ all the creditors so far as relates to any debts due to them  
“ and provable under the bankruptcy.”—32 & 33 Vict. c. 71,  
s. 28.

## BOOK VI.

### THE JURISDICTION AND PRACTICE IN BANKRUPTCY.



#### CHAPTER XVI.

##### THE DISCHARGE OF THE BANKRUPT.

When and on what conditions order of discharge can be obtained.

*The Bankruptcy Act, 1869, s. 48.*

THE bankrupt may at the close of or during the bankruptcy, and after the last meeting of creditors, obtain an order of discharge. The regulations as to the order of discharge are contained in the following section of "The Bankruptcy Act, 1869" :—

" When a bankruptcy is closed, or at any time during its continuance, with the assent of the creditors, testified by a special resolution, the bankrupt may apply to the Court for an order of discharge ; but such discharge shall not be granted unless it is proved to the Court that one of the following conditions has been fulfilled, that is to say, either that a dividend of not less than ten shillings in the pound has been paid out of his property, or might have been paid except through the negligence or fraud of the trustee, or that a special resolution of his creditors has been passed to the

Though, as provided by this section, the application for a discharge may be made at the close of the bankruptcy or during its continuance, yet, the order of discharge will not be made until after the public examination of the bankrupt. This is provided by the following rule of "The Bankruptcy Rules, 1870" :—

"An order of discharge shall not be granted until after the public examination of the bankrupt under section 19 of the Act."—"The Bankruptcy Rules, 1870," r. 140.

Where the discharge is sought to be obtained *during the continuance of the bankruptcy*, the bankrupt must apply to the trustee to summon a meeting of creditors. On this subject, "The Bankruptcy Rules, 1870," provide as follows :—

"A bankrupt desirous of obtaining the assent of his creditors to his applying to the Court for an order of discharge during the continuance of his bankruptcy, shall request the trustee to summon a meeting of his creditors, and thereupon the trustee, upon the deposit of a sufficient sum for costs, shall summon such meeting; where at the meeting the creditors do not so assent no other meeting shall be called for the same purpose until after the lapse of three calendar months."—"The Bankruptcy Rules, 1870," r. 142.

A bankrupt wishing to obtain his discharge must, first, file an application with the registrar in accordance with the following rule of "The Bankruptcy Rules, 1870" :—

"A bankrupt intending to apply for an order of discharge, shall file an application with the registrar, who shall thereupon fix the time and place at which the application will be heard. Notice of the time and place fixed for the hearing of the application of the order of discharge shall be gazetted, and also given to the trustee by the bankrupt, twenty-one days before such day."—"The Bankruptcy Rules, 1870," r. 138.

Forms of application under this rule are provided (a). And also a form of memorandum of application (b), and a form of notice of application for the *Gazette* (c).

On the day appointed for the hearing of the application the bankrupt must be prepared to prove that one of the following conditions has been fulfilled, namely, "*either that a dividend of not less than ten shillings in the pound has been paid out of his property, or might have been paid except through the negligence or fraud of the trustee, or that a special resolution of his creditors has been passed to the effect that his bankruptcy or the failure to pay ten shillings in the pound has, in their opinion, arisen from circumstances for which the bankrupt cannot justly be held*

Order of discharge will not be granted till after public examination of the bankrupt.

*The Bankruptcy Rules, 1870, r. 140.*

Mode of obtaining discharge during continuance of a bankruptcy.

*The Bankruptcy Rules, 1870, r. 142.*

Practice on application for order of discharge.

—Formal application to be filed.

*The Bankruptcy Rules, 1870, r. 138.*

—Form of application.

—Hearing of application.

(a) Appendix V. Forms 62, 63, 64, and 65.

(b) Appendix V. Form 66.

(c) Appendix V. Form 61.

responsible, and that they desire that an order of discharge should be granted to him" (d). If the bankrupt applying for his discharge fail to prove the fulfilment of one of these conditions, no order of discharge will be made (e). But even if he give the required proof the Court is not bound to grant a discharge. For it is expressly provided that the Court may *withhold* altogether the order of discharge, or *suspend* it for such time as it deems to be just in the circumstance following: "*namely, if it appears to the Court, on the representation of the creditors made by special resolution, of the truth of which representation the Court is satisfied, or by other sufficient evidence, that the bankrupt has made default in giving up to his creditors the property which he is required by this Act to give up; or that a prosecution has been commenced against him in pursuance of the provisions relating to the punishment of fraudulent debtors, contained in 'The Debtors Act, 1869,' in respect of any offence alleged to have been committed by him against the said Act*" (f).

Date of order of discharge.

When order of discharge to be dated.

*The Bankruptcy Rules, 1870, r. 139.*

Form of order of discharge.

Order of discharge not delivered out till time for an appeal expires.

An order of discharge is dated on the day on which it is made, and takes effect on and after the day of its date. On this subject, "The Bankruptcy Rules, 1870," provide as follows:—

"An order of discharge shall be dated of the day on which it is made, and shall take effect on and from the day of its date, and shall be gazetted."—"The Bankruptcy Rules, 1870," r. 139.

Forms of orders of discharge (g) are provided, and also of notice in *Gazette* of order of discharge (h).

The following rule of "The Bankruptcy Rules, 1870," regulates the time for delivering out the order of discharge:—

"An order of discharge shall not be delivered out until after the expiration of the time allowed for appeal, or if an appeal

“ the suit of the Crown or of any person for any  
 “ offence against a statute relating to any branch  
 “ of the public revenue, or at the suit of the  
 “ sheriff or other public officer on a bail bond  
 “ entered into for the appearance of any person  
 “ prosecuted for any such offence :

“ And he shall not be discharged from such excepted debts  
 “ unless the Commissioners of the Treasury certify in writing  
 “ their consent to his being discharged therefrom.

“ An order of discharge shall be sufficient evidence of the  
 “ bankruptcy, and of the validity of the proceedings thereon,  
 “ and in any proceedings that may be instituted against a  
 “ bankrupt who has obtained an order of discharge in respect  
 “ of any debt from which he is released by such order, the  
 “ bankrupt may plead that the cause of action occurred before  
 “ his discharge, and may give this Act and the special matter  
 “ in evidence.”—32 & 33 Vict. c. 71, s. 49.

“ The order of discharge shall not release any person who,  
 “ at the date of the order of adjudication, was a partner with  
 “ the bankrupt, or was jointly bound or had made any joint  
 “ contract with him.”—32 & 33 Vict. c. 71, s. 50.

Where a person has failed to obtain his discharge, certain  
 consequences ensue which are indicated by the following section  
 of “ The Bankruptcy Act, 1869 ” :—

“ Where a person who has been made bankrupt has not  
 “ obtained his discharge, then, from and after the close of his  
 “ bankruptcy, the following consequences shall ensue :

“ (1.) No portion of a debt provable under the bankruptcy  
 “ shall be enforced against the property of the  
 “ person so made bankrupt until the expiration  
 “ of three years from the close of the bank-  
 “ ruptcy (s) ; and during that time, if he pay  
 “ to his creditors such additional sum as will,  
 “ with the dividend paid out of his property  
 “ during the bankruptcy, make up ten shillings  
 “ in the pound, he shall be entitled to an order  
 “ of discharge in the same manner as if a  
 “ dividend of ten shillings in the pound had  
 “ originally been paid out of his property :

“ (2.) At the expiration of a period of three years from the  
 “ close of the bankruptcy, if the debtor made  
 “ bankrupt has not obtained an order of discharge,  
 “ any balance remaining unpaid in respect of  
 “ any debt proved in such bankruptcy (but  
 “ without interest in the meantime) shall be  
 “ deemed to be a subsisting debt in the nature  
 “ of a judgment debt, and, subject to the rights

Who are not  
 released by  
 order of dis-  
 charge.

*The Bank-  
 ruptcy Act,  
 1869, s. 50.*

Consequences  
 of failure to  
 obtain dis-  
 charge.

*The Bank-  
 ruptcy Act,  
 1869, s. 54.*

(s) As to close of the bankruptcy, see *post*, cap. xviii. pp. 1412 *et seq.*

“ of any persons who have become creditors of the debtor since the close of his bankruptcy, may be enforced against any property of the debtor, with the sanction of the Court which adjudicated such debtor a bankrupt, or of the Court having jurisdiction in bankruptcy in the place where the property is situated, but to the extent only, and at the time and in manner directed by such Court, and after giving such notice and doing such acts as may be prescribed in that behalf.”—32 & 33 Vict. c. 71, s. 54.

Enforcement of a debt against an undischarged bankrupt.

Application by creditor to enforce payment against undischarged bankrupt of balance of debt due to him.

*The Bankruptcy Rules, 1870, r. 183.*

The following rules of “The Bankruptcy Rules, 1870,” relate to the enforcement of a debt against an undischarged bankrupt:—

“Where after the expiration of a period of three years from the close of a bankruptcy, in which the bankrupt has not obtained an order of discharge, an application is made to the Court for its sanction to the enforcement by a creditor of the payment of the balance remaining unpaid of a debt proved under the bankruptcy, the creditor shall file a statement, verified by affidavit, showing the dividend paid under the bankruptcy, the balance remaining unpaid, and the property against which he seeks to enforce payment, and that such property is the property of the bankrupt, and the registrar shall thereupon appoint a time and place for the hearing of the application and direct notice of the time and place appointed for the hearing, according to the form in the schedule, to be served by an officer or a bailiff of the Court, personally on the bankrupt, or at his usual or last known place of residence or business.”—“The Bankruptcy Rules, 1870,” r. 183.

Proof must be given at hearing of service of notice on the bankrupt, and Court may refuse or adjourn application.

*The Bankruptcy Rules, 1870, r. 184.*

Practice at adjourned hearing of such an application.

*The Bankruptcy Rules, 1870, r. 185.*

“At the hearing of the application service of the notice on the bankrupt shall be proved, unless he appears, and the Court if it think fit may refuse the application, or adjourn the hearing to some other day, and in such latter case shall direct the creditor to cause a notice to be gazetted and inserted in one local paper, seven days before the day to which the hearing is adjourned, according to the form in the schedule.”—“The Bankruptcy Rules, 1870,” r. 184.

“At the adjourned hearing the creditor shall produce a copy of the *Gazette* and of the paper in which the notice was published, and the Court may then hear all persons claiming to be creditors of the debtor before or since the close of the bankruptcy, and make such order in the matter as it thinks fit, or adjourn the hearing for further evidence.”—“The Bankruptcy Rules, 1870,” r. 185.

A form of notice in *Gazette* that a creditor seeks to enforce



payment of his debt out of the property of an undischarged bankrupt is provided (*k*).

Where the bankrupt desires to make up the dividend of 10s. in the pound and so obtain his discharge, under paragraph one of the above section, the practice is regulated by the following rules of "The Bankruptcy Rules, 1870" :—

"Where a bankrupt who has not obtained his order of discharge shall, after the close of the bankruptcy, pay or tender to the several creditors who have proved their debts, a sum, which with the dividend paid previous to the close of the bankruptcy shall make up a dividend of not less than ten shillings in the pound, and shall desire to obtain an order of discharge, he shall file with the registrar a statement, verified by affidavit, of the sums so paid or tendered, and when and where paid, with the receipts of the creditors or their representatives for the sums respectively paid to them written on or attached thereto."—"The Bankruptcy Rules, 1870," r. 172.

"The registrar shall appoint a day for the hearing of the application for the order of discharge, and a notice thereof shall be gazetted twenty-one days before the day appointed, and a copy thereof shall be sent by the registrar to each creditor who has proved or claimed a debt under the bankruptcy."—"The Bankruptcy Rules, 1870," r. 173.

Forms of notice to creditors (*l*), and of notice in *Gazette* (*m*) as required by above rule, are provided :—

"Where a creditor cannot be found or is dead, and no representative is known, the bankrupt may deposit the money payable to such creditor with the registrar."—"The Bankruptcy Rules, 1870," r. 174.

"At the hearing of the application, an order of discharge may be granted, if the Court is satisfied that a sum equal to a dividend of ten shillings in the pound has been paid to all the creditors who proved their debts, unless, on a representation of creditors under section forty-eight of the Act, the Court thinks it just to suspend or withhold such order."—"The Bankruptcy Rules, 1870," r. 175.

(*k*) Appendix V. Form No. 70.

(*l*) Appendix V. Form 68.

(*m*) Appendix V. Form 69.

Bankrupt, after close of bankruptcy, paying or tendering a sum with previous payments making up a dividend of 10s. in £., may file a statement, verified by affidavit, of sums so paid or tendered.

*Bank. Rules, 1870, r. 172.*

Registrar to appoint a day for hearing of application.

*Bank. Rules, 1870, r. 173.*

Forms of notice.

Money may be deposited with registrar if no representative of creditor is known.

*Bank. Rules, 1870, r. 174.* Grant of discharge on proof of payment of 10s. in £.

*Bank. Rules, 1870, r. 175.*

## BOOK VI.

### THE JURISDICTION AND PRACTICE IN BANKRUPTCY.

#### CHAPTER XVII.

##### TAXATION AND RECOVERY OF COSTS.

What costs  
Court may  
award, and  
how such  
costs may be  
recovered.

*Bank. Rules,*  
1870, r. 186.

Order for costs  
to be sealed  
and filed.

*Bank. Rules,*  
1870, r. 187.

All costs in  
discretion of  
Court, and  
ordered by

"THE Bankruptcy Rules, 1870," contain the following provisions with regard to the taxation and recovery of costs :—

"The Court may in all matters before it award such costs as

"to it shall seem fit and just ; and all costs so awarded by the

"London Bankruptcy Court shall be recoverable in the same

"manner as costs awarded by a rule of any of the Superior

"Courts of Common Law at Westminster may be recovered,

"and all costs so awarded by a County Court shall be taxed

"and recoverable in the same manner as costs ordered to be

"paid in any such Court in any action or suit."—"The Bankruptcy Rules, 1870," r. 186.

"Every order for payment of money and costs, or either

"of them, shall be sealed with the seal of the Court, and be

"signed by a registrar, and shall be forthwith filed with the

"proceedings."—"The Bankruptcy Rules, 1870 " (a), r. 187.

“The costs of witnesses, whether they have been examined or not, may, in the discretion of the Court, be allowed.”—  
 “The Bankruptcy Rules, 1870,” r. 170.

Costs of witnesses may be allowed.

*Bank. Rules, 1870, r. 170.*

The schedule to “The Bankruptcy Rules, 1870,” contains a scale of costs in bankruptcy matters, which will be found printed in full in an Appendix to this Work (*b*).

Scale of costs.

As regards the scale by which costs are to be allowed, “The Bankruptcy Rules, 1871,” provide as follows:—

“Where any costs in bankruptcy or liquidation are incurred subsequent to these rules, and the proveable debts of the debtor do not exceed £750, or the estimated assets do not exceed £200, a lower scale of attorney’s costs shall be allowed, namely, three-fifths of the charges ordinarily allowed, disbursements being added. If in error any charges have been allowed or paid on the higher scale, and the proveable debts shall afterwards be ascertained not to exceed £750, or the gross proceeds of the assets not to exceed £200, the excess shall be disallowed, and if paid shall be repaid to the trustee.”—“The Bankruptcy Rules, 1871,” r. 8.

When lower scale of costs to be allowed.

*The Bankruptcy Rules, 1871, r. 8.*

It is to be noticed, that, by the above rule, a lower scale of solicitors’ costs is to be allowed:—(1.) Where the proveable debts of the debtor do not exceed £750; OR (2.) the estimated assets do not exceed £200. Moreover, if *by mistake* any charges have been allowed on a higher scale, the excess is to be disallowed, and if paid the trustee is to repay them. It has been held that this rule does not apply to a case of composition (*c*).

Effect of above rule.

(*b*) Appendix VI.

(*c*) *Ex parte Castle*; *In re Meikle*, L. R. 1 Ch. D. 111.

# BOOK VI.

## THE JURISDICTION AND PRACTICE IN BANKRUPTCY.

### CHAPTER XVIII.

#### THE CLOSE OF THE BANKRUPTCY.

Bankruptcy to be "closed" when all the estate has been realized.

*The Bankruptcy Act, 1869, s. 47.*

FORMER Bankruptcy Acts did not provide for the *close* of bankruptcy proceedings. "The Bankruptcy Act, 1869," however, contains an express provision on the subject, which is in the following terms:—

"When the whole property of the bankrupt has been realized for the benefit of his creditors, or so much thereof as can, in the joint opinion of the trustee and committee of inspection, be realized without needlessly protracting the bankruptcy, or a composition or arrangement has been completed, the trustee shall make a report accordingly to the Court, and the Court, if satisfied that the whole of the property of the bankrupt has been realized for the benefit of his creditors, or so much thereof as can be realized without needlessly protracting the bankruptcy, or that a composition or arrangement has been completed, shall make an order that the bankruptcy has closed, and the bankruptcy shall be deemed to have closed at and after the date of such order.

"A copy of the order closing the bankruptcy may be published in the *London Gazette*, and the production of a copy of such gazette containing a copy of the order shall be conclusive evidence of the order having been made and of the date and contents thereof."—32 & 33 Vict. c. 71, s. 47.

Form of trustee's report.

Form of order to close bankruptcy.

Regulations as to accounts of a closed bankruptcy.

A form of report by the trustee to the Court is provided (a). A form of order closing the bankruptcy is also furnished (b). The following rules of "The Bankruptcy Rules, 1871," relate to the accounts of a closed bankruptcy:—

"At the expiration of twelve months from the declaration of such dividend (c), or, if the bankruptcy be closed within twelve

(a) Appendix V. Form 51.

(b) Appendix V. Form 52.

(c) *I.e.*, Of any dividend. See Rule 18, set out *ante*, p. 1398.

"months of such declaration, then at the close of the bankruptcy, the trustee shall forward to the comptroller a list of the dividends unclaimed, together with vouchers showing the payment of such dividends as have been paid."—"The Bankruptcy Rules, 1871," r. 18.

"Upon the receipt of such list the comptroller shall send to the trustee an order by the accountant in bankruptcy upon the Bank of England to receive the amount of the dividends which remain unclaimed, and the trustee shall within one week of the date of such order pay into the Bank of England the sum mentioned in such order."—"The Bankruptcy Rules, 1871," r. 19.

"Any other monies arising from the property of the bankrupt remaining under the control of the trustee at the close of the bankruptcy of any bankrupt, shall, in like manner, be paid by the trustee into the Bank of England."—"The Bankruptcy Rules, 1871," r. 20.

Let us now ascertain what are the duties of the registrar upon the close of the bankruptcy.

It has been seen (*d*) that the registrar, until a trustee in bankruptcy is appointed, discharges the duties appertaining to that office. On the other hand, after the close of the bankruptcy, when the trustee has obtained his release, the registrar again, as it were, steps into the place of the trustee, and does certain things incidental to the bankruptcy which, after its close, necessarily remain to be performed. Thus, as we have already seen (*e*), the registrar takes possession of the trustee's official books and papers (*f*). So the registrar is required to realize the outstanding property, and may declare a dividend from the proceeds thereof in the same manner as if he had been the trustee by reason of there being no trustee acting during the continuance of the bankruptcy (*g*).

The following rules of "The Bankruptcy Rules, 1871," relate to the duties of the registrar after the close of a bankruptcy :—

"All monies received by a registrar acting as trustee after the close of a bankruptcy, shall in like manner be paid by him into the Bank of England within one month of the receipt of the same."—"The Bankruptcy Rules, 1871," r. 21.

"The governor and company of the Bank of England shall receive and carry to the credit of the account of the accountant in bankruptcy, all monies so directed to be received by any order of the accountant."—"The Bankruptcy Rules, 1871," r. 22.

Trustee to forward to comptroller list of dividends unclaimed.

*Bank. Rules, 1871, r. 18.*

Comptroller to send trustee an order by accountant in bankruptcy

*Bank. Rules, 1871, r. 19.*

Money to be paid by trustee into Bank of England.

*Bank. Rules, 1871, r. 20.*

Duties of the registrar.

On release of the trustee, registrar again becomes trustee.

Monies received by registrar to be paid into Bank of England.

*Bank. Rules, 1871, r. 21.*

To credit of accountant-general.

*Bank. Rules, 1871, r. 22.*

(*d*) *Ante*, p. 1330.

(*e*) *Ante*, p. 1390.

(*f*) Rule 249, *ante*, p. 1390.

(*g*) Rule 125, *ante*, p. 1398.

Court may order payments to *bona fide* claimants.

*Bank. Rules, 1871, r. 23.*

Orders for payment of fees to registrar to be made by Judge.

*Bank. Rules, 1871, r. 24.*

Registrar acting as a trustee after close of bankruptcy to forward twice a year certificate of payment into Bank of England.

*Bank. Rules, 1871, r. 26.*

On payment into Bank, trustee to receive certificate from cashiers of Bank.

*Bank. Rules, 1871, r. 27.*

"Subject to the provisions of section 116 of 'The Bankruptcy Act, 1869,' and section 19 of 'The Bankruptcy Repeal and Insolvent Court Act, 1869,' the Court, upon being satisfied that any person who may claim to be entitled to any dividend or other payment from monies which shall have been so paid into the Bank of England is entitled thereto, may order payment of the same according to the form in the "schedule" (*h*).—"The Bankruptcy Rules, 1871," r. 23.

"Where payment is required to be made to a registrar of a County Court for the fees authorised to be taken by him for the duties of realising the estate and of making a dividend, the order directing such payment shall be signed by the Judge of the Court, and any order made by the London Bankruptcy Court for the payment of such fees shall be made payable to such officer as may be authorised to receive fees on behalf of Her Majesty's Exchequer."—"The Bankruptcy Rules, 1871," r. 24.

"Every registrar acting as a trustee after the close of a bankruptcy shall, within ten days after the 30th June and 31st December, forward to the comptroller, a certificate to the effect that he has paid into the Bank of England all sums of money received by him on account of closed estates."—"The Bankruptcy Rules, 1871," r. 25.

"Every registrar acting as a trustee after the close of a bankruptcy shall, within twenty days of the 30th June in every year, forward to the accountant in bankruptcy an account showing the balance standing to the credit of each closed estate in which he is trustee, which account, if correct, shall be certified by the accountant and returned by him to the registrar."—"The Bankruptcy Rules, 1871," r. 26.

"Where any money shall be paid into the Bank of England pursuant to these rules, the trustee shall receive a certificate from one of the cashiers of such bank."—"The Bankruptcy Rules, 1871," r. 27.

It has been seen (*k*) that it is the duty of the trustee upon the close of the bankruptcy to deliver to the registrar a list of the bankrupt's outstanding property, who shall realize the property, if practicable, and declare a dividend from the proceeds thereof in the same manner as if he had been the trustee by reason of there being no trustee acting during the continuance of the bankruptcy (*l*).

(*h*) Appendix V. Form 5 ("Bankruptcy Rules, 1871.")

(*k*) *Ante*, p. 1398.

(*l*) "The Bankruptcy Rules, 1870." Rule 125, *ante*, p. 1398.

## BOOK VI.

### THE JURISDICTION AND PRACTICE IN BANKRUPTCY.

#### CHAPTER XIX.

##### ANNULLING ADJUDICATION.

It would seem, according to a recent case, that the Court has a general jurisdiction to annul an adjudication of bankruptcy in a proper case (*a*). But, independently of this *general* jurisdiction, the Court has *express* power conferred upon it to annul the adjudication in certain cases to which attention will now be called.

Court has general jurisdiction to annul the adjudication.

Under section 28 of "The Bankruptcy Act, 1869," the annulling of the order of adjudication, may, as we have seen (*b*), be made the *condition* of a scheme of arrangement or composition accepted by the trustee in bankruptcy on behalf of the creditors. The Court has no power, it seems, under this section, to annul the adjudication until *after* the first meeting (*c*).

Adjudication may be annulled in cases under s. 28 of "The Bankruptcy Act, 1869."

When the creditors fail to appoint a trustee, under section 84 of "The Bankruptcy Act, 1869," the Court also has power to annul the adjudication (*d*). The Court ought not, however, to annul the adjudication under this section if one creditor wishes the bankruptcy to proceed, and his debt is so much greater than all the others that he is substantially the only creditor (*e*). And when the first meeting has been adjourned the application to annul should not be made until after the adjourned meeting has been held (*f*).

If creditors fail to appoint a trustee in bankruptcy, the adjudication may be annulled.

The Court has also power under rule 266 (*g*) of "The Bankruptcy Rules, 1870," to annul an adjudication made by it for the protection of the bankrupt, pending the passing of some special or extraordinary resolution determining on liquidation by arrangement or composition. Where a debtor filed a liqui-

Adjudication made by Court pending proceedings for liquidation by arrangement or composition may be annulled.

(*a*) *Ex parte Ashworth*; *In re Hoare*, L. R. 18 Eq. 706; and see *Ex parte Upfill*; *In re Upfill*, L. R. 1 Ch. 439.

(*b*) *Ante*, p. 1402; and see *Ex parte Ashworth*; *In re Hoare*, *ubi supra*.

(*c*) *Re Lord*, 60 L. T. 10.

(*d*) See sect 84, *ante*, p. 1345.

(*e*) *Ex parte English Joint Stock Bank*; *In re Finney*, L. R. 6 Ch. 79.

(*f*) *Re Green*, 14 Solicitors' Journal, p. 575.

(*g*) See this Rule set out *post*, p. 1430.

dation petition and his creditors resolved on a liquidation by arrangement, but before they did so an adjudication of bankruptcy had been made against the debtor on a petition presented *before* the filing of the liquidation petition, it was held that the Court could annul the adjudication either under this rule or under its general jurisdiction (*h*).

*Semble.*

The Court may refuse to annul adjudication, though all creditors consent.

*Semble* that adjudication made on application of a bankrupt may be annulled.

Application for adjudication should be made with due diligence.

Consequences of annulling an adjudication.

Annulling of adjudication not to affect validity of acts of trustee, but property is to vest in person appointed by Court or revert to bankrupt.

Order of Court annulling adjudication to be published in *London Gazette* and advertised locally.

*Bank. Act, 1869, s. 81.*

Form of notice of order annulling bankruptcy.

It seems that the Court may, on sufficient grounds, refuse to annul, though all the creditors who have proved assent to the application (*i*). It seems also that an adjudication made on the application of a bankrupt may, in a proper case, be annulled without his consent (*k*).

The application for adjudication should be made with due diligence (*l*).

The consequences of annulling adjudication are indicated by the following section of "The Bankruptcy Act, 1869":—

"Whenever any adjudication in bankruptcy is annulled all sales and dispositions of property and payments duly made, and all acts theretofore done, by the trustee or any person acting under his authority, or by the Court, shall be valid, but the property of the debtor who was adjudged a bankrupt shall in such case vest in such person as the Court may appoint, or in default of any such appointment revert to the bankrupt for all his estate or interest therein upon such terms and subject to such conditions, if any, as the Court may declare by order. A copy of the order of the Court annulling the adjudication of a debtor as a bankrupt shall be forthwith published in the *London Gazette* and advertised locally in the prescribed manner, and the production of a copy of the *Gazette* containing such order shall be conclusive evidence of the fact of the adjudication having been annulled, and of the terms of the order annulling the same."—32 & 33 Vict. c. 71, s. 81.

In reference to this section *Kelly, C. B.*, in *Bailey v. Johnson* (*m*) observed that it "was passed to provide for many possible cases, where, notwithstanding the annulling of the bankruptcy, various interests in the bankrupt's effects might have arisen."

A form of notice in the *Gazette* and local paper of the order annulling the adjudication is provided (*n*).

(*h*) *Ex parte Ashworth*; *In re Hoare*, L. R. 18 Eq. 705.

(*i*) *Ex parte Jones*; *In re Jones*, L. R. 3 Ch. 144.

(*k*) *Ex parte Davis & Denton*; *In re Davis & Denton*, L. R. 2 Ch. 363.

(*l*) *Ib.*, and see *Ex parte Sampson*; *In re Cobham*, L. R. 1 Ch. 476.

(*m*) 40 L. J. N. S. Exch. 189, 192.

(*n*) Appendix V. Form No. 59.



## BOOK VI.

### THE JURISDICTION AND PRACTICE IN BANKRUPTCY.

#### CHAPTER XX.

##### APPEALS IN BANKRUPTCY.

Two kinds of appeals exist in bankruptcy matters. In the first place, as has been mentioned in the earlier chapters of this work, there exist appeals to the County Court from the trustee's decision in regard to proofs (*a*), or in respect of any act of the trustee which may be complained of (*b*). These have already been sufficiently noticed (*c*). A right of appeal also exists against the registration of or the refusal to register a resolution for liquidation or composition, under rule 295 of "The Bankruptcy Rules, 1870" (*d*). This will be a matter to be referred to in the next chapter, which deals with composition and liquidation by arrangement.

The present chapter will be exclusively devoted to the consideration of appeals from the decision of the County Court Judge to the Chief Judge, and thence to the Court of Appeal and House of Lords.

As regards *right of appeal*, it is by "The Bankruptcy Act, 1869," provided, in a section already set out (*e*), that no Court having jurisdiction in bankruptcy is subject to be restrained in the execution of its powers under the Act by the order of any other Court, "*nor shall any appeal lie from its decisions, except in manner directed by this Act*" (*f*).

The general right of appeal to the London Court of Bankruptcy is conferred by the following section of "The Bankruptcy Act, 1869" :—

"Every Court having jurisdiction in bankruptcy under this

Two kinds of appeal : (1.) From trustee, &c., to local Court ; (2.) From local Court to London Court.

Appeals to the London Bankruptcy Court alone considered in the present chapter.

Appeal only lies where given by the Bankruptcy Act.

General right of appeal given by "The Bankruptcy Act, 1869."

(*a*) Rule 74 of the General Rules, *ante*, p. 1358.

(*b*) 32 & 33 Vict. c. 71, s. 20, and Rules 50 and 74 of the General Rules.

(*c*) *Ante*, pp. 1309, 1358, 1380.

(*d*) Rule 295 of the General Rules, *post*, pp. 1440, 1441.

(*e*) Sect. 72, *ante*, p. 1257.

(*f*) 32 & 33 Vict. c. 71, s. 72, *ante*, p. 1257.

Every Court possessing bankruptcy jurisdiction may review, rescind or vary its own order, and such order may likewise be appealed from.

*The Bankruptcy Act, 1869, s. 71.*

Section 71 also gives local Court a power of re-hearing.

Re-hearing should not be given merely to give opportunity of appeal.

Effect of above section as regards appeals.

In whom right of appeal is vested.

“ Act may review, rescind, or vary any order made by it in pursuance of this Act. Any person aggrieved by any order of a local bankruptcy Court in respect of a matter of fact, or of law made in pursuance of this Act, may appeal to the Chief Judge in bankruptcy, and it shall be lawful for such Judge to alter, reverse, or confirm such order as he thinks just. Any order made by the Chief Judge in bankruptcy, whether in respect of a matter brought before him on appeal or not, shall be subject to an appeal to the Court of Appeal in Chancery (which Court, for the purposes of this Act, shall be and form a Court of Record, and shall have all the jurisdiction, powers, and authorities of the Court of Bankruptcy, to be exerciseable either originally or on appeal, and shall have all the powers and authorities of the Court of Chancery relative to the trial of questions of fact, by jury, issue, or otherwise), and also, with the leave of the Court of Appeal, to the House of Lords, but no appeal shall be entertained under this Act except in conformity to such rules of Court as may for the time being be in force in relation to such appeal.”— 32 & 33 Vict. c. 71, s. 71.

Section 71 of “The Bankruptcy Act, 1869,” it will be noticed, really deals with two rights resembling one another, and yet perfectly distinct, that is to say, the right of any bankruptcy Court to reconsider, and, if it think fit, vary or rescind altogether its own order; and, in the second place, the right of any person aggrieved by an order of a bankruptcy Court to appeal therefrom with a view to obtaining its reversal, in whole or in part, by the Chief Judge or Court of Appeal, as the case may be.

When an order has been once made, a local Court ought not to allow a re-hearing for the mere purpose of enabling an appeal to be brought which would otherwise be too late (*g*).

The effect of the above enactment is, briefly stated, to confer an appeal from a County Court acting as a local Court of Bankruptcy whenever any person is aggrieved by *any* order of such Court in respect of a matter either of fact or of law, and made under the Act (*h*). Moreover, an appeal lies from an order made by a local Court of Bankruptcy while acting under section 74 as auxiliary to the London Court (*i*).

The right of appeal from any local Court of Bankruptcy, under the above section, is vested in “*any person aggrieved*.” Accordingly, where an adjudication of bankruptcy was made, founded upon the execution by the debtor of a bill of sale which was held to be an act of bankruptcy, it was held by the

(*g*) *Ex parte Simmons*; *In re Lister*, L. R. 2 Ch. Div. 749.

(*h*) See *Ex parte Fletcher*; *Re Vaughan*, L. R. 6 Ch. Div. 350.

(*i*) See this section set out *ante*, pp. 1255, 1256.

Court of Appeal that the holder of the bill of sale was entitled to appeal from the adjudication (*k*).

It is also to be noticed that the appeal lies equally from an order made in respect of a question of *fact* as from one pronounced on a matter of *law*. And as the words of the Act confer a right of appeal in respect of "*any order*," it follows that such right may be exercised at any stage of the bankruptcy proceedings, and may be from an interlocutory order before adjudication, or from the order made on the hearing for adjudication, or at any other time.

The section of "The Bankruptcy Act, 1869," conferring the right of appeal, expressly provides, it will have been noticed, that "*no appeal shall be entertained under this Act except in conformity to such rules of Court as may for the time being be in force in relation to such appeal*." The bankruptcy rules here referred to exclusively regulate the mode of appeal from local bankruptcy Courts, and Order LVIII. of "The Judicature Rules of Court, 1875," does not affect such appeals (*l*).

The time within which an appeal must be presented is regulated by the following rule of "The Bankruptcy Rules, 1870" :—

"An appeal against a decision or order of the Chief Judge in bankruptcy, or a Judge of a County Court, shall be entered with the registrar of appeals within and not later than twenty-one days from the said decision or order, by leaving with him a copy of the appeal notice of motion."—"The Bankruptcy Rules, 1870," r. 143.

This rule, and two subsequent rules of "The Bankruptcy Rules, 1870," are now amended by the following rule of "The Bankruptcy Rules, 1878" :—

"That rules 143, 148, and 149 of the General Rules, dated '1st January, 1870, made in pursuance of 'The Bankruptcy Act, 1869,' be altered by omitting the words 'registrar of appeals' from each of such rules, and substituting in lieu thereof the words 'senior registrar of the London Bankruptcy Court.'"—"The Bankruptcy Rules, 1878," r. 1.

It has been held that in construing the 143rd rule of "The Bankruptcy Rules, 1870," above set out, the words "*decision*" and "*order*" mean the same thing; and that the twenty-one days within which an appeal from a County Court to the Chief Judge must be brought are to be reckoned from the date of the settling and signing of the order (*m*).

In order that there may be every opportunity afforded of complying with the provisions of rule 143 in regard to entering an appeal within a certain time, it is provided that the office

Appeal from an order in respect of a question of *fact*, as well as from one pronounced on a matter of *law*.

The mode of appeal.

With whom and within what time an appeal is to be entered.

*The Bankruptcy Rules, 1870, r. 143.*

In future appeals not to be entered with registrar of appeals, but with senior registrar of the London Bankruptcy Court.

*The Bankruptcy Rules, 1878, r. 1.*

Construction of rule as to; notice of appeal.

Days and times during which the

(*k*) *Ex parte Thoday*; *In re Ellis*, L. R. 2 Ch. D. 229 and 797; and see *Ex parte Dutton*; *Re Woods*, L. R. 11 Ch. D. 66.

(*l*) *Ex parte Cochrane*; *In re Scudall*, L. R. 9 Ch. D. 749.

(*m*) *Id.*

office for entering bankruptcy appeals is to be kept open.

*The Bankruptcy Rules, 1873, r. 2.*

Computation of time for appeal.

Notice of appeal.

Copy of appeal notice to be sent to registrar of Court appealed from, and likewise to each respondent.

*The Bankruptcy Rules, 1870, r. 144.*

Within what time notice of appeal to be given to each respondent.

for entering bankruptcy appeals shall be kept open, except on certain specified days. This subject was formerly regulated by rule 150 of "The Bankruptcy Rules, 1870." That rule, however, has been rescinded (*n*), and in its place the following rule of "The Bankruptcy Rules, 1873," has been substituted :—

"The office for entering bankruptcy appeals shall be kept open daily throughout the year from ten till four o'clock, except on Sunday, Christmas Day, Good Friday, the Saturday before Good Friday, Monday and Tuesday in Easter week, or any day appointed for a public fast or thanksgiving; and except also on Saturdays, when the office may be closed at two o'clock, and the days on which the office shall be wholly closed shall not be reckoned in the number of days ordered for entering appeals."—"The Bankruptcy Rules, 1873," r. 2.

It is to be noticed that this rule expressly provides that "*the days on which the office shall be wholly closed shall not be reckoned in the number of days ordered for entering appeals.*"

The appeal having been entered, an appeal-notice has to be sent by the appellant "*forthwith*" to the registrar of the Court appealed from, and a similar notice to each respondent four days before the motion day. On this subject "The Bankruptcy Rules, 1870," provide as follows :—

"Upon entering an appeal, a copy of the appeal notice shall be sent forthwith by the appellant, to the registrar of the Court appealed from, who shall forthwith file the same with the proceedings, and a similar notice shall be delivered by the appellant to each respondent four days before the day on which he intends to move."—"The Bankruptcy Rules, 1870," r. 144.

As regards the notice to the registrar required by this rule, it is to be noticed that it must be delivered "*forthwith*." It has been held that "*forthwith*" must be construed with reference to the period of twenty-one days within which, by rule 143, a notice of appeal must be entered with the registrar of appeals, and that it means within twenty-one days from the date of the order appealed from, or as soon as possible afterwards (*o*).

The notice of appeal required by the above rule (rule 144), to be given to each of the respondents, is not directed to be given "*forthwith*," like the notice to the registrar, but four days before the day on which he intends to move. This notice should, it seems, be given within twenty-one days from the settling and signing of the order, in a case where, owing to the

(*n*) By "The Bankruptcy Rules, 1873," which provide as follows :—

"Rule 150 of 'The Bankruptcy Rules, 1870,' be, and the same is hereby rescinded."—"The Bankruptcy Rules, 1873," r. 1.

(*o*) *Ex parte Silence*; *In Re Silence*, L. R. 7 Ch. D. 238.

closing of the office for entering bankruptcy appeals, the appeal itself has not actually been entered (*p*).

Having dealt with the subject of the time within which an appeal must be entered and of the notices required to be given, it is, in the next place, necessary to point out that, either *before* or at the time of entering an appeal, the appellant must make a deposit to satisfy any costs that may be incurred. On this subject "The Bankruptcy Rules, 1870," provide as follows:—

"At or before the time of entering an appeal the party intending to appeal shall deposit with the registrar of appeals such sum, not being less than ten pounds and not exceeding forty pounds, as the Court appealed from shall direct, to satisfy, so far as the same may extend, any costs that the appellant may be ordered to pay, and in the absence of any such direction, the sum deposited shall be twenty pounds."—"The Bankruptcy Rules, 1870," r. 145.

It is, however, now provided by "The Bankruptcy Rules, 1878," that the sum to be deposited on appeal shall be paid into the Bank of England and not into the registrar's hands. The rule effecting this alteration is as follows:—

"The sum to be deposited on appeal in pursuance of rule 145 of the said General Rules, shall in future be paid by the party intending to appeal, into the Bank of England to the credit of the account intituled, 'The Account of the Accountant in Bankruptcy.'"—"The Bankruptcy Rules, 1878," r. 2 (*q*).

It is provided, by the following rule of "The Bankruptcy Rules, 1870," that if there are *several* respondents *with separate interests*, the Court may direct that a separate deposit shall be made as to every respondent:—

"Where there are several respondents in separate interests the Court may, if it shall think fit, direct a separate deposit to be made as to every such respondent."—"The Bankruptcy Rules, 1870," r. 146.

By a rule in bankruptcy—rule 147, of the Rules of 1870—which will be set out in full presently, it is directed that:—  
"No new evidence shall be received on any appeal, unless the Court of Appeal (*r*) shall so direct, but any of the parties shall be at liberty to bring before the Court of Appeal by affidavit the circumstances under which the decision or order appealed from was made."

As regards the filing of affidavits intended to be used on

Deposit on appeal to cover costs.

What deposit required on appeal.  
*The Bankruptcy Rules, 1870, r. 145.*

Deposit made on appeal to be paid into the Bank of England.

*The Bankruptcy Rules, 1878, r. 2.*

Where there are separate respondents, with separate interests, a separate deposit to be made as to every one of them.

*The Bankruptcy Rules, 1870, r. 146.*

Evidence on hearing of appeal.

The filing of

(*p*) *Ex parte Saffery; In re Lambert*, L. R. 5 Ch. D. 365.

(*q*) By a subsequent Rule (Rule 4) of "The Bankruptcy Rules, 1878," which it is unnecessary to set out *verbatim*, it is provided that the sums already deposited with the Registrar of Appeals shall be forthwith paid into the Bank of England.

(*r*) *Infra*, p. 1422, as to Court for determination of appeals.

affidavits which are to be used on appeal.

With whom they are to be filed, and to whom copies must be sent.

*Bank. Rules, 1870, r. 148.*

The transmission to Court of Appeal of file of proceedings from Court appealed from.

*Bank. Rules, 1870, r. 149.*

The Court for determination of appeals.

How appeals are brought on and what evidence is receivable.

*The Bankruptcy Rules, 1870, r. 147.*

Consequence of appellant not appearing at hearing of appeal.

Order on appeal.

the appeal. "The Bankruptcy Rules, 1870," provide as follows :—

"Every affidavit intended to be used upon the hearing of any appeal shall be filed with the senior registrar of the London Bankruptcy Court, and a copy thereof sent by the appellant to the respondent four clear days before the day appointed for hearing."—"The Bankruptcy Rules, 1870," r. 148.

The proceedings in the matter under appeal are sometimes transmitted to the senior registrar of the London Bankruptcy Court for the use of the Court of Appeal. On this subject "The Bankruptcy Rules, 1870," provide as follows :—

"The registrar of the Court appealed from shall, upon the application of the senior registrar of the London Bankruptcy Court, transmit to him the file of proceedings in the matter under appeal."—"The Bankruptcy Rules, 1870," r. 149 (s).

As regards the Court which determines appeals from local bankruptcy Courts, they are disposed of by the Chief Judge in bankruptcy in the first instance (t), even where the appeal is from the County Court Judge acting as auxiliary of the London Court (u). There is likewise an appeal from the decision of the Chief Judge to the Court of Appeal, and, with the leave of the Court of Appeal, to the House of Lords (x).

All appeals are brought on by motion, and partake of the nature of a rehearing. On this subject "The Bankruptcy Rules, 1870" (y), provide as follows :—

"All appeals shall be brought on by motion, and no new evidence shall be received on any appeal unless the Court of Appeal shall so direct; but any of the parties shall be at liberty to bring before the Court of Appeal, by affidavit, the circumstances under which the decision or order appealed from was made."—"The Bankruptcy Rules, 1870," r. 147.

When a bankruptcy appeal has been set down in the ordinary course, and is in the day's paper for hearing, if the appellant does not appear the respondent is entitled to have the appeal dismissed with costs, without giving any proof that he has been served with a notice of appeal (z).

As regards the order on the appeal, it will be noted that the Chief Judge has on the hearing of the appeal power to alter, reverse, or confirm the order appealed from as he sees fit.

A country solicitor personally attending an appeal instead of

(s) This Rule is inserted as altered by Rule 1 of "The Bankruptcy Rules, 1878." See *ante*, p. 1419.

(t) 32 & 33 Vict. c. 71, s. 71, *ante*, p. 1418.

(u) *Ex parte Fletcher; In re Varghan*, L. R. 6 Ch. D. 350.

(x) 32 & 33 Vict. c. 71, s. 71, *ante*, p. 1418.

(y) *Ib.*

(z) *Ex parte Lows; In re Lows*, L. R. 7 Ch. D. 160.

employing his London agent, will, on taxation, be allowed the additional charges and expenses thereby incurred (*a*).

With regard to the costs of appeal, formerly, except in the case of misconduct on the part of the respondent, a successful appellant from the County Court was not allowed his costs of appeal (*b*). This was in accordance with the universal rule of the Chancery Division and of the House of Lords (*c*). But it has recently been held that in appeals from orders made by County Courts in bankruptcy, presented since the 1st November, 1875, a successful appellant will as a general rule be entitled to his costs of appeal (*d*).

Costs.

If it is desired to appeal from the Chief Judge to the Court of Appeal, this course is, as has been seen (*e*), open to any person aggrieved. But it is important to bear in mind that the time for appealing from the Chief Judge to the Court of Appeal is now regulated entirely by Order LVIII. of the "Rules of Court, 1875," and the rule 143 of "The Bankruptcy Rules, 1870" (*f*), has no application to such appeals (*g*). Moreover, the Court of Appeal may require such security as it thinks fit to be given for the costs of the appeal (*h*).

How appeals from the Chief Judge to the Court of Appeal are regulated.

The power of carrying an appeal from the Court of Appeal to the House of Lords cannot be exercised as of right, but only by leave of the Court (*i*).

Appeal to the House of Lords is not of right, but by leave only.

(*a*) 32 & 33 Vict. c. 71, s. 71, set out *ante*, p. 1418; *In re Foster*; *Ex parte Dickens*, L. R. 8 Ch. D. 598.

(*b*) *In re Cherry*; *Ex parte Mathers*, 40 L. J. N. S. Bank. 90.

(*c*) *Denny v. Hancock*, 4 L. J. N. S. Ch. 193.

(*d*) *Ex parte Masters*; *In re Winson*, L. R. 1 Ch. D. 113.

(*e*) *Ante*, p. 1422.

(*f*) *Ante*, p. 1419.

(*g*) *Ex parte Viney*; *In re Gilbert*, L. R. 4 Ch. D. 794.

(*h*) *Ex parte Isaacs*; *In re Baum*, L. R. 9 Ch. D. 271.

(*i*) See 32 & 33 Vict. c. 71, s. 71, *ante*, p. 1418; and see *Ex parte Attwater*; *Re Turner*, L. R. 5 Ch. D. 27; 46 L. J. Bank. 41; *Ex parte Hayman*; *Re Puleford*, L. R. 8 Ch. D. 11; 47 L. J. Bank. 54.

## BOOK VI.

### THE JURISDICTION AND PRACTICE IN BANKRUPTCY.

#### CHAPTER XXI.

##### LIQUIDATIONS BY ARRANGEMENT AND COMPOSITIONS WITH CREDITORS.

Trust deeds and composition deeds existed before 1869.

PREVIOUSLY to the coming into operation of "The Bankruptcy Act, 1869," there existed a system of "trust deeds" and "composition deeds," regulating arrangements under the *control of the Court*, and arrangements by deed *out of Court*, which were, in many respects, defective in their operation, and framed in a spirit of consideration for the defaulting debtor, without sufficiently regarding the interest of the creditors. In reference to arrangements by deed out of Court, under the *old* law "The Bankruptcy Rules, 1870," contain certain provisions which are set out in the foot note (a).

Proceedings of "liquidation by arrangement" and "composition"

By "The Bankruptcy Act, 1869," what may be called the "deed" system, was abolished, and in its place are substituted certain proceedings which are akin to bankruptcy, but nevertheless distinguishable from it. These proceedings are "Liqui-



In the case of liquidation by arrangement, the similarity to bankruptcy is so great that it has been described as "bankruptcy without a bankruptcy petition being presented or an order of adjudication made" (*b*). This observation does not hold good in the case of "composition." For, in the latter case, no trustee is appointed, the debtor is not deprived of his property, but retains it, and, out of it, pays the sum accepted in composition.

Liquidation by arrangement a *quasi* bankruptcy.

"Composition" a different kind of proceeding.

"The Bankruptcy Act, 1869," deals with liquidation by arrangement and composition with creditors by separate sections. "The Bankruptcy Rules, 1870," necessarily blend the two subjects together, to a great extent. For, up to the general meeting, when the creditors determine whether liquidation or composition shall be adopted, the proceedings are necessarily the same; and it is only when the proceedings have reached this stage that they diverge and assume a distinct character. Having regard, therefore, to what has just been stated, it will be convenient, in dealing with liquidation by arrangement and composition, to consider:—I. Proceedings in liquidation and composition down to the passing of a resolution at the first general meeting of creditors; II. Proceedings at and subsequent to the first general meeting, where liquidation by arrangement has been resolved upon; III. Proceedings at and subsequent to the first general meeting, where composition has been resolved upon.

But down to the first meeting of creditors the proceedings the same, both in liquidation and composition.

#### SECTION I.—PROCEEDINGS FOR LIQUIDATION BY ARRANGEMENT OR COMPOSITION DOWN TO AND INCLUSIVE OF THE FIRST GENERAL MEETING.

It not unfrequently happens that a debtor feels himself to be in embarrassed circumstances and is yet anxious, if possible, to avoid being made a bankrupt. When this is the case, he is at liberty, by virtue of sections 125 & 126 of "The Bankruptcy Act, 1869" (*c*), to summon a general meeting of his creditors to determine what course shall be pursued. In this section we shall consider, by what machinery, this result is brought about.

In what cases proceedings for liquidation by arrangement may be taken.

The first thing to be done is to prepare a petition which states that the petitioner is desirous of instituting proceedings for liquidation of his affairs by arrangement or composition with his creditors. On this subject "The Bankruptcy Rules, 1870," provide as follows:—

Such proceedings commenced by petition and affidavit.

"Proceedings under these sections (*d*) shall be instituted by

*The Bankruptcy Rules, 1870, r. 252.*

(*b*) See Robson on Bankruptcy (2nd ed.) pp. 629, 630.

(*c*) See these sections *post*, pp. 1435—1438, 1449—1451.

(*d*) *I. e.*, Sects. 125 and 126 of "The Bankruptcy Act, 1869," *post*, pp. 1435—1438, 1449—1451.

"the debtor by petition and affidavit thereto annexed according to the forms given in the schedule."—"The Bankruptcy Rules, 1870," r. 252.

*Forms of  
petition and  
affidavit.*

Forms of petition and affidavit are provided (*e*). If the debtor is a trader he must state in his petition the estimated amount of debts due by him to his creditors (*f*). And in all cases the debtor should mention his private address as well as his business address (*g*).

*Petition and  
affidavit to  
be filed.*

The petition having been prepared, it is taken to the office for registration of arrangement proceedings, where it is filed. On this subject, "The Bankruptcy Rules, 1870," provide as follows:—

*The Bank-  
ruptcy Rules,  
1870, r. 315.*

"An office shall be attached to the London Bankruptcy Court to be called the "office for registration of arrangement proceedings." Such office shall be presided over by such registrar or registrars as the Chief Judge may from time to time appoint. All petitions to such Court under sections 125 and 126, and all proceedings thereunder shall be filed in such office, and the same shall be kept in continuation of the records of the trust deeds under the 'Bankruptcy Act, 1861,' which shall be transferred to the aforesaid office. A similar index to that heretofore in use for trust deeds, or as near thereto as may be, shall be kept of all resolutions registered under the 'Bankruptcy Act, 1869.' The resolutions registered in the London Court of Bankruptcy shall be entered therein as soon as registered, and the resolutions registered in the County Courts shall be entered therein as soon as an office copy thereof shall be received. Every registrar of a County Court registering any special or extraordinary resolution shall forthwith send an office copy thereof to the said office for registration of arrangement proceedings (such office copy to be paid for by the person registering the resolution)." (*g*).

"could be presented."—"The Bankruptcy Rules, 1870," r. 253.

If the debtor die *after* the presentation of the petition but *before* adjudication thereon, the Court has no jurisdiction to continue the proceedings (*k*).

The proceedings having been duly instituted, the next thing to be done is to summon a general meeting. The mode of doing this is indicated by the following rules of "The Bankruptcy Rules, 1870":—

"The first general meeting shall be summoned, to be held at the place mentioned in the affidavit filed with the petition (subject to such place being changed by order of the Court, as hereinafter provided), and the time of meeting shall be at a stated hour between 10 a.m. and 5 p.m. on a day within one calendar month from the presentation of the petition, unless the Court in any particular case shall otherwise order."—"The Bankruptcy Rules, 1870," r. 254.

"The first general meeting of creditors shall be summoned by notice according to the form in the schedule" (*l*).—"The Bankruptcy Rules, 1870," r. 255.

"All first general meetings shall be summoned as follows:—

"A sufficient number of forms of such notice, duly signed, addressed, and stamped for post, shall be delivered to the registrar, together with a request and list of creditors according to the form in the schedule (*m*), and such list may be added to, or additional requests and lists be filed, as circumstances may require. Every request shall bear a stamp calculated at the rate of threepence for each notice required to be sent. The registrar shall cause the notices to be checked with the list or lists delivered to him, and to be sealed with the seal of the Court and to be posted to the creditors, and the person posting the same shall forthwith make and file an affidavit (*n*), exhibiting a form of notice, and stating that he had posted similar notices to the persons mentioned in the lists delivered to the registrar, and stating also the date and place of posting."—"The Bankruptcy Rules, 1870," r. 256.

"The debtor shall also deliver to the registrar a notice according to the form in the schedule (*o*) to be gazetted seven days at least before the meeting is to be held."—"The Bankruptcy Rules, 1870," r. 257.

"Notices summoning any first general meeting shall be posted at least 14 days before the day on which the meeting is to be held."—"The Bankruptcy Rules, 1870," r. 258.

*The Bankruptcy Rules, 1870, r. 253.*

Death of debtor before adjudication.

Summoning of first general meeting.

*The Bankruptcy Rules, 1870, r. 254.*

First general meeting to be summoned by notice.

*The Bankruptcy Rules, 1870, r. 255.*

Mode of summoning first general meetings.

*The Bankruptcy Rules, 1870, r. 256.*

Notice of meeting to be gazetted seven days before.

*Bank. Rules, 1870, r. 257.*

Notices summoning first general meeting to be posted fourteen days before it is to be held.

*Bank. Rules, 1870, r. 258.*

(*k*) *Re Obbard*, 19 W. R. 563; S. C. 34 L. T. N. S. 145.

(*l*) Appendix V. Form 108.

(*m*) Appendix V. Form 110.

(*n*) Appendix V. Form 109.

(*o*) Appendix V. Form 111.

Court may order place of any general meeting to be changed.

*The Bankruptcy Rules, 1870, r. 259.*

“Upon sufficient cause proved to the satisfaction of the Court by the debtor or by any creditor, either *ex parte*, or otherwise, the Court may order and direct the place of any general meeting to be changed, provided application be made in such time as will allow notice of the change to be given to the creditors, as hereinafter directed. Any order so made by the Court shall be according to the form in the schedule (p), and a copy thereof shall be gazetted forthwith, and notice thereof shall be given by the registrar by sending by post, on or before the eighth day prior to the meeting, a sealed office copy of the order of the Court addressed to the several creditors, and to the debtor. The expense of and incident to such order and despatching copies thereof to the creditors as aforesaid shall be borne and paid in such manner as the Court shall direct, and in case of non-compliance the copies of the order shall not be sent, but the meeting shall be held as originally summoned.”—“The Bankruptcy Rules, 1870,” r. 259.

Proceedings between petition and general meeting.

The necessary steps to be gone through to summon a meeting having now been pointed out, it is necessary to consider certain proceedings which may be taken before such meeting assembles. These proceedings are of a threefold character, namely—(1.) The restraint of legal proceedings; (2.) The appointment of a receiver or manager; (3.) The adjudication of the debtor as a bankrupt.

(1.) Restraint of legal proceedings.

After petition, Court may restrain legal proceedings

(1.) *First*, as to the restraint of legal proceedings :—

“The Court may at any time after the presentation of a petition restrain further proceedings in any action, suit, execution, bankruptcy petition or other legal process against the debtor or his estate in respect of any debt provable; or it may allow such proceedings, whether in progress at the

"majority in value of such creditors may at any time prior to the passing of the special or extraordinary resolution, as the case may be, nominate and appoint a receiver or manager of the trade effects or business of the debtor, or any part thereof according to the form in the schedule (g). Where any such receiver or manager has been so appointed he shall investigate the state of the debtor's affairs, and report thereon to the general meeting of creditors. The nomination and appointment of any such receiver shall be confirmed by the Court upon summary application in any case in which the debtor refuses to give possession or control to the receiver or manager so appointed. Any such nomination paper shall be in duplicate, and may be signed by the creditors in their individual or partnership names, or by some person who shall state in his signature that he does so by procuration on the creditor's behalf. The signatures or debts need not be verified further than by the affidavit of one of the three principal creditors signing the nomination paper (or a partner in the firm of one of them) according to the form in the schedule (r), and such affidavit shall be filed in Court with one of the nomination papers. If any receiver or manager has been appointed by the Court, the nominee of the creditors shall be forthwith substituted in his place, and the Court shall order accordingly."—"The Bankruptcy Rules, 1870," r. 262.

"Where a receiver or manager has been appointed the Court may at any time cancel his appointment by consent of the debtor and of the creditor or creditors (if any) upon whose application the appointment was made, and of any creditor or creditors whose proceedings may have been restrained as aforesaid, or if the Court shall see fit."—"The Bankruptcy Rules, 1870," r. 263.

"Where a receiver or manager has been appointed he shall be entitled to the custody of the books and effects of the debtor, and the debtor or any person having the previous custody thereof on his behalf shall forthwith deliver the same to the receiver."—"The Bankruptcy Rules, 1870," r. 264.

"The receiver or manager shall at all times permit the debtor or any of his creditors or their agents to have access to and inspect the debtor's books of account."—"The Bankruptcy Rules, 1870," r. 265.

"The Court shall have the same power and discretion as to the appointment, remuneration, and removal of the receiver or manager, and in the settlement of his accounts, and in directing the appropriation of monies or property in his hands as is exercised by the Court of Chancery, or as near thereto as may be."—"The Bankruptcy Rules, 1870," r. 299.

On trader's petition, creditors may appoint receiver or manager where none appointed by Court.

Mode of appointment.

—Duties.

—Powers.

*The Bankruptcy Rules, 1870, r. 262.*

The appointment of a receiver or manager by Court may be cancelled.

*Bank. Rules, 1870, r. 263.*

Receiver or manager to have custody of debtor's books and effects.

*Bank. Rules, 1870, r. 264.*

Debtor and creditor to have access to books.

*Bank. Rules, 1870, r. 265.*

The Court to have same powers as Court of Chancery in regard to receivers and managers.

*Bank. Rules, 1870, r. 299.*

(g) Appendix V. Form 113.

(r) Appendix V. Form 4, "The Bankruptcy Rules, 1871."

Receiver or manager to cease to act upon appointment of trustee, or on passing of extraordinary resolution.

*Bank. Rules, 1870, r. 297.*

Receiver or manager to render accounts and make payments to trustee in liquidations, and to debtor in compositions.

*Bank. Rules, 1870, r. 298.*

3. Debtor may be adjudicated bankrupt if Court see fit.

*Bank. Rules, 1870, r. 266.*

If creditors fail to pass any resolution Court may proceed to

"If a receiver or manager has been appointed, his duties shall terminate upon the appointment of a trustee in cases of liquidation, or by arrangement, and upon the passing of the extraordinary resolution in such cases of composition, unless such resolution shall otherwise provide."—The Bankruptcy Rules, 1870, r. 297.

"Where a receiver or manager has been appointed and his duties are concluded, he shall render his account, and pay or deliver over any money or property in his hands to the trustee in cases of liquidation by arrangement, or to the debtor or his trustee in cases of composition."—The Bankruptcy Rules, 1870, r. 298.

3. *Thirdly*, as to the adjudication of the debtor as a bankrupt:—

"Where proceedings have been instituted for liquidation or composition the Court may adjudicate the debtor bankrupt if in the opinion of the Court the property of the debtor cannot be sufficiently protected by the exercise of the power hereinbefore given to restrain suits and actions, and the appointment of a receiver or manager; but in any such case all proceedings under such order of adjudication shall be stayed immediately upon the making thereof and until the creditors shall have passed some special or extraordinary resolution in reference to the liquidation or composition, and in the event of any such resolution being duly passed the adjudication shall be forthwith annulled."—The Bankruptcy Rules, 1870, r. 266.

"In the event of any neglect on the part of the creditors to pass such resolution, the Court may, on the application of any of the creditors, and after notice to the debtor, make an order of adjudication against the debtor, or direct the bank-

"out of the debtor's estate, unless the Court shall otherwise order."—"The Bankruptcy Rules, 1870," r. 292.

It is now necessary to treat of certain matters connected with the first general meeting itself, which are common alike to liquidation by arrangement and to composition with creditors. The conduct of proceedings for liquidation or composition vary according as they are instituted by partners, or by individual debtors. It may be as well, therefore, to indicate at once the nature of these distinctions as they determine the mode of procedure at first general meetings. On this subject "The Bankruptcy Rules, 1870," provide as follows:—

"In cases of proceedings for liquidation, by arrangement or composition, instituted by partners, separate meetings of the different classes of creditors shall be held; thus: if the partnership consists of A., B., and C., a meeting of the joint creditors of A., B., and C. shall be first held, and separate meetings of the separate creditors of A., B., and C. shall be held at a date or time subsequent to the meeting of the partnership creditors. The joint creditors may come to such resolution as they may think fit with regard to the joint estate. The separate creditors may also come to such resolution as they may think fit as regards the liquidation of the estate of their individual debtor, but in the event of their determining upon his bankruptcy, or the liquidation of his estate by arrangement, they shall choose the same trustee, if any, as has been or shall be appointed by the joint or partnership creditors, but they may appoint a committee of inspection from their own body, if they think fit, or they may adopt the committee (if any) appointed by the joint or partnership creditors. In the event of the separate creditors of any such debtor agreeing to accept a composition, in cases where the joint creditors have resolved on a liquidation by arrangement, the assets of such separate debtor shall be made available by the trustee for or towards the payment thereof, in such manner as the Court shall direct and approve, and any surplus of such separate estate remaining in the hands of the trustee, after payment of or provision for such composition, and all proper costs incurred in connection therewith, shall be deemed partnership assets. If in any such case the separate debtor shall be a member of more than one firm, the surplus of his separate estate shall be applied in such manner as the Court may direct."—"The Bankruptcy Rules, 1870," r. 285.

"If the petition be by partners, and any two or more of such partners constitute a separate and independent firm, the creditors of such firm may likewise come to a separate resolution as regards the liquidation of such minor partnership estate, and where any surplus shall arise upon the liquidation thereof, the same shall be carried over to the separate estates of the partners in such minor firm according to their respective rights therein."—"The Bankruptcy Rules, 1870," r. 286.

costs incurred in relation to proceedings for liquidation or composition, where bankruptcy occurs pending such proceedings.

*The Bankruptcy Rules, 1870, r. 292.*

Holding of the meetings of creditors.

In proceedings for liquidation or composition by partners, separate meetings of different classes of creditors to be held.

*The Bankruptcy Rules, 1870, r. 285.*

Proceedings for liquidation or composition by partners, where two or more of them constitute a separate and independent firm.

*The Bankruptcy Rules, 1870, r. 286.*

**Proceedings  
for liquidation  
or composition  
by an indi-  
vidual debtor.**

**The Bank-  
ruptcy Rules,  
1870, r. 257.**

"In cases of proceedings for or towards liquidation by arrangement or composition by an individual debtor, his creditors and debts shall be deemed to be and include not only those creditors to whom or those debts in respect of which he is individually responsible, but also those creditors and debts to whom or in respect of which he is also responsible jointly with any other person or persons: and the statutory majority required for the purpose of any resolution shall be a collective majority of the whole of such joint and separate creditors assembled at any meeting. In any such last-mentioned proceedings the terms of the resolution as regards joint and separate creditors need not be identical, and, if so desired, the resolution may provide for the payment of a composition to the separate creditors, and that the rights of the joint creditors shall not be prejudiced or affected thereby."—"The Bankruptcy Rules, 1870," r. 257.

**Assembly of  
first meeting.**

The first general meeting having been duly summoned, in manner already pointed out (*h*), assembles on the day appointed, which, we have seen, must be held "*at a stated hour between 10 A.M. and 5 P.M. on a day within one calendar month from the presentation of the petition*" (*u*).

As regards the *place* of meeting, it is to be held at the place mentioned in the affidavit filed with the petition (*x*). The Court may, however, order the place so mentioned to be changed (*y*).

**Election of  
chairman.**

The first thing to be done at the meeting is to elect a chairman. This is provided by section 125 of sub-section 2, clause *a*, "The Bankruptcy Act, 1869," which likewise, it will be noticed, contains various regulations in regard to liquidation by arrangement of the affairs of a debtor, and which will be found set out in full in the next section of this chapter (*z*).



everything. On this subject "The Bankruptcy Act, 1869," provides as follows:—

"That no creditor shall be entitled to vote until he has proved by a statutory declaration a debt provable in bankruptcy to be due to him, and the amount of such debt, with any prescribed particulars; and any person wilfully making a false declaration in relation to such debt shall be guilty of a misdemeanor."—32 & 33 Vict. c. 71, s. 125, sub-s. (2)(a).

As regards the conduct of proceedings at the first meeting of creditors, it is to be noticed that "The Bankruptcy Act, 1869," provides that, subject to certain modifications, (1.) in reference to the person who shall preside over the meeting; and (2.) in reference to the persons who shall vote thereat:—

"All the provisions of this Act, relating to a first meeting of creditors, and to subsequent meetings of creditors in the course of a bankruptcy, including the description of creditors entitled to vote at such meetings, and the debts in respect of which they are entitled to vote, shall apply respectively to the first meeting of creditors, and to subsequent meetings of creditors, for the purposes of this section."—32 & 33 Vict. c. 71, s. 125, sub-s. (2)(b).

"Creditors may prove their debts and appoint proxies as in bankruptcy."—"The Bankruptcy Rules, 1870," r. 269.

"All debts which would have been provable in bankruptcy had the debtor been adjudicated bankrupt at the date of the institution of the proceedings shall be provable under any such proceedings."—"The Bankruptcy Rules, 1870," r. 270.

"All proofs and proxies intended to be used at any general meeting, and not previously filed, shall be handed in to the chairman of the meeting. Any objection thereto shall be marked thereon by the chairman, and shall be dealt with by the registrar on the resolution being presented to him for registration."—"The Bankruptcy Rules, 1870," r. 271.

"A secured creditor, unless he shall have realized his security, shall, previously to being allowed to prove or vote, state in his proof the particulars of his security and the value at which he assesses the same, and he shall be deemed to be a creditor only in respect of the balance due to him after deducting such assessed value of the security. In cases of liquidation by arrangement any secured creditor so proving shall be bound to pay over to the trustee the amount which his security shall produce beyond the amount of such assessed value, and the trustee shall be entitled at any time before realization of such security by the creditor to redeem the same upon payment of such assessed value. The proof of

Proof of debts as in bankruptcy.

*Bank. Rules, 1870, r. 269.*

What debts are provable.

*Bank. Rules, 1870, r. 270.*

Proofs and proxies to be filed or handed to chairman of meeting.

*Bank. Rules, 1870, r. 271.*

Proof by a secured creditor.

*Bank. Rules, 1870, r. 272.*

(a) This section is set out in full, *post*, pp. 1435—1438; and see *ante*, Rules 269 to 273, and Rule 310 as to proof of debts.

(b) This section is set out in full, *post*, pp. 1435—1438.

- “any such creditor shall not be increased in the event of the security realizing a less sum than the value at which he has so assessed the same.”—“The Bankruptcy Rules, 1870,” r. 272.
- Withdrawal of proofs.**  
*Bank. Rules, 1870, r. 273.*
- Proof of debt by creditor conclusive evidence of notice having been received by him of meetings.**  
*Bank. Rules, 1870, r. 310.*
- Any resolution to be passed or act to be done requires a majority in value of creditors present or represented at meeting to give it validity.**  
*Bank. Rules, 1870, r. 293.*
- The adjournment of a meeting not to affect resolution previously passed.**  
*Bank. Rules, 1870, r. 294.*
- Statement of his affairs must be produced by debtor.**  
*Bank. Rules, 1870, r. 274.*
- Descriptions of bills of**
- “Where any creditor shall desire to retire from any meeting and not to be considered as present, he may withdraw his proof without prejudice to his again proving his debt on any subsequent occasion.”—“The Bankruptcy Rules, 1870,” r. 273.
- “Proof of debt by any creditor shall be deemed conclusive evidence that notice of all general meetings, prior to and exclusive of that at which such proof is produced has been duly given to him.”—“The Bankruptcy Rules, 1870,” r. 310.
- As regards the majority by which any resolution to be passed or act to be done must be carried, “The Bankruptcy Rules, 1870,” contain the following general provision upon the subject:—
- “Where any resolution is required to be passed or any act to be done by the creditors present or represented at any meeting, the majority required for the purpose shall, in the absence of any enactment to the contrary, be a majority in value of the creditors present or represented thereat.”—“The Bankruptcy Rules, 1870,” r. 293.
- It sometimes happens that after resolutions have been passed the meeting is adjourned for other purposes. When this takes place the validity of the resolution is in no way affected, as appears from the following rule of “The Bankruptcy Rules, 1870”:—
- “Resolutions duly come to at any meeting shall have full force and effect, notwithstanding that it may also be resolved that for other purposes the meeting shall stand adjourned.”—“The Bankruptcy Rules, 1870,” r. 294.
- A debtor who has presented a petition for liquidation by arrangement or composition, must produce a statement of his affairs to the first meeting of his creditors.
- “The debtor shall produce to the first general meeting, and also, in case there be any, to the second general meeting, a statement showing the whole of his debts and assets, and the names and addresses of the creditors to whom such debts respectively are due. The name of each creditor in such statement shall be numbered consecutively, and the list of creditors whose debts do not exceed 10*l.* shall be separated from and follow after the list of those creditors whose debts exceed that amount. The debtor’s statement of affairs shall be as near as may be in the form required in bankruptcy.”—“The Bankruptcy Rules, 1870,” r. 274.
- “Where a debt arises on a bill of exchange or promissory note, if the debtor is ignorant of the holder of any such bill

" of exchange or promissory note, he shall be required to state the amount of such bill or note, the date on which it falls due, the name of the acceptor or person to whom it is payable, and any other particulars within his knowledge respecting the same, and the insertion of such particulars shall be deemed a sufficient description of the creditor of the debtor in respect of such debt, and any mistake made inadvertently by a debtor in the statement of his debts may be corrected after the prescribed notice has been given, with the consent of a general meeting of his creditors."—32 & 33 Vict. c. 71, s. 125

exchange and notes to be given.

*The Bankruptcy Act, 1869, s. 125.*

The following rule of "The Bankruptcy Rules, 1870," indicates how a debtor's statement may be corrected :—

Debtor's statement may be corrected with assent of creditors.

" Any mistake made inadvertently by a debtor in the statement of his debts may be corrected with the assent of a majority in value of his creditors assembled at a general meeting similarly summoned by the debtor."—"The Bankruptcy Rules, 1870," r. 306.

*The Bankruptcy Rules, 1870, r. 306.*

Before arriving at any conclusion the creditors may wish to examine the debtor, and consider his statement of debts and assets. Accordingly "The Bankruptcy Act, 1869," provides that the debtor shall be present at the first general meeting and shall answer any inquiries which may be made of him.

Debtor may be examined.

If no resolution be passed at the first general meeting of creditors the proceedings drop ; but the petition for arrangement by liquidation or composition is an "act of bankruptcy" on which any creditor can proceed to make the debtor a bankrupt.

Effect of no resolution being passed.

The creditors may, however, pass a resolution if they so please. And such resolution may be either (1) for liquidation by arrangement ; or (2) to accept a composition. Each of these two kinds of proceedings will now be considered, and, as they essentially differ, a separate section will be given to each of them.

Creditors may resolve on either liquidation or composition by arrangement.

## SECTION II.—PROCEEDINGS WHERE LIQUIDATION BY ARRANGEMENT IS RESOLVED ON.

Should the creditors assembled at the first meeting of creditors resolve upon "Liquidation by Arrangement," the resolution and the subsequent proceedings, are governed by the following section of "The Bankruptcy Act, 1869" :—

Enactment governing proceedings on liquidation by arrangement.

" The following regulations shall be made with respect to the liquidation by arrangement of the affairs of the debtor :

- " (1.) A debtor unable to pay his debts may summon a "general meeting of his creditors, and such "meeting may, by a special resolution as defined by this Act, declare that the affairs of

- “ the debtor are to be liquidated by arrangement  
 “ and not in bankruptcy, and may at that or  
 “ some subsequent meeting, held at an interval  
 “ of not more than a week, appoint a trustee with  
 “ or without a committee of inspection (c).
- “ (2.) All the provisions of this Act relating to a first  
 “ meeting of creditors, and to subsequent meet-  
 “ ings of creditors in the case of a bankruptcy,  
 “ including the description of creditors entitled  
 “ to vote at such meetings, and the debts in  
 “ respect of which they are entitled to vote, shall  
 “ apply respectively to the first meeting of credi-  
 “ tors, and to subsequent meetings of creditors,  
 “ for the purposes of this section, subject to the  
 “ following modifications (d) :
- “ (a.) That every such meeting shall be presided over  
 “ by such chairman as the meeting may elect;  
 “ and
- “ (b.) That no creditor shall be entitled to vote  
 “ until he has proved by a statutory declaration  
 “ a debt provable in bankruptcy to be due to  
 “ him, and the amount of such debt, with any  
 “ prescribed particulars ; and any person wilfully  
 “ making a false declaration in relation to such  
 “ debt shall be guilty of a misdemeanor.
- “ (3.) The debtor, unless prevented by sickness or other  
 “ cause satisfactory to such meeting, shall be  
 “ present at the meeting at which the special  
 “ resolution is passed, and shall answer any in-  
 “ quiries made of him, and he, or if he is so  
 “ prevented from being at such meeting some  
 “ one on his behalf, shall produce to the meeting  
 “ a statement showing the whole of his assets  
 “ and debts, and the names and addresses of the  
 “ creditors to whom his debts are due.
- “ (4.) The special resolution, together with the statement  
 “ of the assets and debts of the debtor, and the  
 “ name of the trustee appointed, and of the  
 “ members, if any, of the committee of inspec-  
 “ tion, shall be presented to the registrar, and it  
 “ shall be his duty to inquire whether such reso-  
 “ lution has been passed in manner directed by  
 “ this section, but if satisfied that it was so  
 “ passed, and that a trustee has been appointed  
 “ with or without a committee of inspection, he

(c) See *ante*, cap. x. p. 1346, as to Committee of Inspection.

(d) See *ante*, cap. x. pp. 1341 *et seq.*

- “ shall forthwith register the resolution (e) and  
 “ the statement of the assets and debts of the  
 “ debtor, and such resolution and statement shall  
 “ be open for inspection on the prescribed condi-  
 “ tions, and the liquidation by arrangement shall  
 “ be deemed to have commenced as from the date  
 “ of the appointment of the trustee.
- “(5.) All such property of the debtor as would, if he  
 “ were made bankrupt, be divisible amongst his  
 “ creditors (f), shall, from and after the date of  
 “ the appointment of a trustee, vest in such  
 “ trustee under a liquidation by arrangement,  
 “ and be divisible amongst the creditors, and  
 “ all such settlements, conveyances, transfers,  
 “ charges, payments, obligations, and proceed-  
 “ ings as would be void against the trustee in the  
 “ case of a bankruptcy shall be void against the  
 “ trustee in the case of liquidation by arrange-  
 “ ment.
- “(6.) The certificate of the registrar in respect of the  
 “ appointment of any trustee in the case of a  
 “ liquidation by arrangement shall be of the  
 “ same effect as a certificate of the court to the  
 “ like effect in the case of a bankruptcy.
- “(7.) The trustee under a liquidation shall have the same  
 “ powers, and perform the same duties, as a  
 “ trustee under a bankruptcy, and the property  
 “ of the debtor shall be distributed in the same  
 “ manner as in a bankruptcy; and with the  
 “ modification hereinafter mentioned all the pro-  
 “ visions of this Act shall, so far as the same are  
 “ applicable, apply to the case of a liquidation by  
 “ arrangement in the same manner as if the  
 “ word ‘bankrupt’ included a debtor whose  
 “ affairs are under liquidation, and the word  
 “ ‘bankruptcy’ included liquidation by arrange-  
 “ ment; and in construing such provisions the  
 “ appointment of a trustee under a liquidation  
 “ shall, according to circumstances, be deemed to  
 “ be equivalent to and a substitute for the pre-  
 “ sentation of a petition in bankruptcy, or the  
 “ service of such petition or an order of adjudi-  
 “ cation in bankruptcy (g).
- “(8.) The creditors at their first or any general meeting

(e) The resolution cannot be registered unless all the creditors have received notice of the meeting, see *Ex parte Rogers*, 22 L. T. R. 283.

(f) As to what property of bankrupt is divisible amongst the creditors, see *ibid.*, p. 1331.

(g) See *Ex parte Key*, L. R. 10 Eq. 432.

- “ may prescribe the bank into which the trustee  
 “ is to pay any monies received by him, and the  
 “ sum which he may retain in his hands.
- “(9.) The provisions of this Act with respect to the close  
 “ of the bankruptcy, discharge of a bankrupt, to  
 “ the release of the trustee, and to the audit of  
 “ accounts by the comptroller, shall not apply in  
 “ the case of a debtor whose affairs are under liqui-  
 “ dation by arrangement; but the close of the  
 “ liquidation may be fixed, and the discharge of  
 “ the debtor and the release of the trustee may  
 “ be granted by a special resolution of the credi-  
 “ tors in general meeting, and the accounts may  
 “ be audited in pursuance of such resolution, at  
 “ such time and in such manner and upon such  
 “ terms and conditions as the creditors think  
 “ fit.
- “(10.) The trustee shall report to the registrar the dis-  
 “ charge of the debtor, and a certificate of such  
 “ discharge given by the registrar shall have the  
 “ same effect as an order of discharge given to  
 “ a bankrupt under this Act.
- “(11.) Rules of Court may be made in relation to pro-  
 “ ceedings on the occasion of liquidation by  
 “ arrangement in the same manner and to the  
 “ same extent and of the same authority as in  
 “ respect of proceedings in bankruptcy.
- “(12.) If it appear to the Court on satisfactory evidence  
 “ that the liquidation by arrangement cannot, in  
 “ consequence of legal difficulties, or of there  
 “ being no trustee for the time being, or for any  
 “ sufficient cause, proceed without injustice or  
 “ undue delay to the creditors or to the debtor,  
 “ the Court may adjudge the debtor a bankrupt,  
 “ and proceedings may be had accordingly.
- “(13.) Where no committee of inspection is appointed  
 “ the trustee may act in his own discretion in  
 “ cases where he would otherwise have been  
 “ bound to refer to such committee.
- “(14.) In calculating a majority on a special resolution  
 “ for the purposes of this section, creditors whose  
 “ debts amount to sums not exceeding ten  
 “ pounds shall be reckoned in the majority in  
 “ value, but not in the majority in number.”—  
 32 & 33 Vict. c. 71, s. 125.

How special  
 resolution  
 decided.

A *special* resolution is one decided by a majority in number, and three-fourths in value, of the creditors present personally

or by proxy at the meeting, and voting on such resolution (*h*). However, the mode of calculating a majority on a special resolution for liquidation by arrangement is expressly prescribed by "The Bankruptcy Act, 1869," which provides as follows:

"In calculating a majority on a special resolution for the purposes of this section, creditors whose debts amount to sums not exceeding ten pounds shall be reckoned in the majority in value, but not in the majority in number."—32 & 33 Vict. c. 71, s. 125, sub-sect. 14 (*i*).

"The Bankruptcy Rules, 1870" provide as follows with regard to the passing of a resolution at the first general meeting of creditors:—

"The resolution passed at the first general meeting (or first and second general meetings, as the case may be) shall determine whether the affairs of the debtor are to be liquidated by arrangement and not in bankruptcy, or whether any and what composition shall be accepted in satisfaction of the debts due to the creditors from the debtor, or it may reject either of such modes of arrangement. The resolution may declare to whom the registration of the resolution and the debtor's statement of affairs shall be intrusted, and the original resolution and statement shall forthwith be delivered accordingly to the person so appointed, and in the event of no such declaration being made in the resolution the same shall be registered by the debtor. Only such resolutions as are reduced into writing and are signed by or on behalf of the statutory majority of the creditors assembled at a meeting shall be taken cognizance of by the Court, but the signatures of such creditors may be subscribed subsequently to the meeting, but prior to the filing or registration of the resolution."—"The Bankruptcy Rules, 1870," r. 275.

It has been held that resolutions are valid where the signatures are subscribed prior to their being either filed or registered (*k*).

It is to be noticed that the above rule provides that the resolution may declare who shall register the original resolution and debtor's statement, and that those shall be delivered to him forthwith, and that if no person is nominated for this duty the registration is made by the debtor himself. The following rule of "The Bankruptcy Rules, 1870," specifies what papers shall be handed by the chairman to the person appointed to register the special resolution:—

"The Chairman shall be bound forthwith to deliver to the person, if any, so appointed, or, in default of such appointment, to the debtor, every declaration or affidavit for proof of debt and proxy paper of what nature or kind soever, and

How votes calculated.

*The Bankruptcy Act, 1869, s. 125, sub-s. 14.*

The resolution at first general meeting to determine whether liquidation or composition is to be adopted, or may reject either mode of procedure.

*The Bankruptcy Rules, 1870, r. 275.*

Signing of resolutions.

Chairman of first meeting to deliver to person appointed to register a resolution and debtor's statement all documents in his possession.

*The Bankruptcy Rules, 1870, r. 276.*

(*h*) 32 & 33 Vict. c. 71, s. 16, par. 8, *ante*, p. 1343.

(*i*) This section set out in full, *ante*, pp. 1435—1438.

(*k*) *Ex parte Thorne, Re Bullin*, L. R. 8 Ch. 722.

"whether in due form or otherwise, which shall have been received at the general meeting or meetings, and also the debtor's statement of affairs, and in default thereof may be summoned before the Court, and the Court may make such order in the manner as it shall think fit."—"The Bankruptcy Rules, 1870," r. 276.

Passing of special resolution as to liquidation by arrangement conclusive evidence of compliance by debtor, with statutory provisions in regard to his statement.

*The Bankruptcy Rules, 1870, r. 301.*

It may be as well to mention in this place that, if the creditors pass a special resolution as to liquidation by arrangement, this is conclusive evidence that the debtor's statement is in accordance with statutory powers on the subject (f). This is provided by the following rule of "The Bankruptcy Rules, 1870" :—

"The passing of a special resolution (in the case of liquidation by arrangement) shall be deemed and taken as conclusive evidence that the debtor has complied with the provisions of the statute with regard to the statement of his affairs required to be submitted to the general meetings of his creditors. The debtor shall, however, at all times render to the trustee every information in his power with reference to his debts and assets, and shall, in default, be liable to be summoned and examined before the Court thereon."—"The Bankruptcy Rules, 1870," r. 301.

Registration of special resolution.

We now come to the actual registration of the resolution passed at the first general meeting of the creditors. On this subject "The Bankruptcy Act, 1869," provides as follows :—

"The special resolution, together with the statement of the assets and debts of the debtor, and the name of the trustee appointed, and of the members, if any, of the committee of inspection, shall be presented to the registrar, and it shall be his duty to inquire whether such resolution has been passed in manner directed by this section, but if satisfied that it was so passed, and that a trustee has been appointed with or without a committee of inspection, he shall forthwith register the resolution and the statement of the assets and debts of the debtor, and such resolution and statement shall be open for inspection on the prescribed conditions, and the liquidation by arrangement shall be deemed to have commenced as from the date of the appointment of the trustee."—32 & 33 Vict. c. 71, s. 125, sub-sec. (4) (m).

"The Bankruptcy Rules, 1870," provide as follows on the same subject :—

Course to be pursued by registrar upon presentation of a special or extraordinary resolution for registration.

"Upon presentation of a special or extraordinary resolution for registration, the registrar shall examine the same, and may hear any creditor who shall have given him notice of his desire to be heard thereon. The registrar being satisfied that the requirements of the statute and of these rules have

(f) See *In re Webb, Ex parte Walter*, L. R. 2 Ch. D. 326; and see also *Ex parte Aaronson, In re Aaronson*, L. R. 7 Ch. D. 713.

(m) See this section set out in full *ante*, pp. 1435—1438.



"been complied with shall register the same, making a memorandum thereon and on the debtor's statement of affairs as follows :—

" 'Registered                      day of                      187                      registrar,'  
 "and shall seal the same with the seal of the Court. The  
 "registrar in cases of liquidation by arrangement shall there-  
 "upon deliver to the trustee a certificate according to the form  
 "in the schedule. The registration of any special or extra-  
 "ordinary resolution, or the refusal to register the same by the  
 "registrar, shall be an act that may be appealed from by the  
 "debtor or any creditor who was heard before the registrar on  
 "the occasion of such registration or refusal. The registrar  
 "shall, where he refuses to register such resolution, certify the  
 "grounds of such refusal by memorandum under his hand, and  
 "file it with the proceedings."—"The Bankruptcy Rules,  
 1870," r. 295.

Appeal if  
 registrar  
 refuse to  
 register  
 resolution.

*The Bank-  
 ruptcy Rules,*  
 1870, r. 295.

A form of certificate referred to in this rule is provided (n).

Form of  
 certificate.

The proper time for investigation into the affairs of a debtor, who has filed a petition for liquidation by arrangement with his creditors, is at the meeting of creditors; and the registrar has no power, upon the presentation to him for registration of a resolution for composition, to direct an examination before him of the debtor or other witnesses (o).

Registrar can-  
 not examine  
 debtor as to  
 his affairs.

"Neither the resolutions nor the proofs or proxies of  
 "creditors assembled at any meeting shall be objected to or  
 "refused by the registrar by reason of any informality therein,  
 "unless he shall be of opinion that such informality is matter  
 "of moment, in which event he shall refer the matter to the  
 "Judge."—"The Bankruptcy Rules, 1870," r. 300.

Informalities,  
 unless of  
 moment, in  
 resolutions,  
 proofs, or  
 proxies, no  
 ground of  
 refusal by  
 registrar.

It is expressly provided by "The Bankruptcy Rules, 1870," that, after the registration of the special resolution and debtor's statement, they shall remain open for inspection :—

*The Bank-  
 ruptcy Rules,*  
 1870, r. 300.

"The resolution and statement so registered shall at all  
 "times be open for inspection by any creditor whose name  
 "appears on the statement or by any person on his behalf."—  
 "The Bankruptcy Rules, 1870," r. 296.

After regis-  
 tration, the  
 resolution  
 and debtor's  
 statement  
 remain open  
 to inspection.

When the registrar has duly registered the special resolution, this act is deemed to be, in the absence of fraud, conclusive evidence that it was duly passed, and that all the requisitions of "The Bankruptcy Act, 1869," in respect of such resolutions, have been complied with. On this subject "The Bankruptcy Act, 1869," provides as follows :—

*The Bank-  
 ruptcy Rules,*  
 1870, r. 296.

"The registration by the registrar of a special resolution of  
 "the creditors on the occasion of a liquidation by arrangement  
 "under Part Six of this Act, or of an extraordinary resolution  
 "of the creditors on the occasion of a composition under the

Registration  
 of resolution  
 conclusive  
 evidence that  
 Act complied  
 with.

(n) Appendix V. Form 121.

(o) *Ex parte Levy & Co.*, L. R. 11 Eq. 619.

A form of resolution is provided (g).

"The Bankruptcy Act, 1869," contains the following provisions with regard to the vesting of property in the trustee on appointment :—

"All such property of the debtor as would, if he were made bankrupt, be divisible amongst his creditors, shall, from and after the date of the appointment of a trustee, vest in such trustee under a liquidation by arrangement, and be divisible amongst the creditors, and all such settlements, conveyances, transfers, charges, payments, obligations, and proceedings as would be void against the trustee in the case of a bankruptcy shall be void against the trustee in the case of liquidation by arrangement."—32 & 33 Vict. c. 71, s. 125, sub-s. (5) (r).

"The certificate of the registrar in respect of the appointment of any trustee in the case of liquidation by arrangement shall be of the same effect as a certificate of the Court to the like effect in the case of a bankruptcy."—32 & 33 Vict. c. 71, s. 125, sub-s. (6) (r).

The effect of the registrar's certificate in case of bankruptcy has already been stated (s).

The powers and duties of the trustee in liquidation are specified by the following provisions of "The Bankruptcy Act, 1869" :—

"The trustee under a liquidation shall have the same powers, and perform the same duties, as a trustee under a bankruptcy, and the property of the debtor shall be distributed in the same manner as in a bankruptcy; and with the modification hereinafter mentioned all the provisions of this Act shall, so far as the same are applicable, apply to the case of a liquidation by arrangement in the same manner as if the word 'bankrupt' included a debtor whose affairs are under liquidation, and the word 'bankruptcy' included liquidation by arrangement; and in construing such provisions the appointment of a trustee under a liquidation shall, according to circumstances, be deemed to be equivalent to and a substitute for the presentation of a petition in bankruptcy, or the service of such petition or an order of adjudication in bankruptcy."—32 & 33 Vict. c. 71, s. 125, sub-s. (7) (t).

"The creditors at their first or any general meeting may prescribe the bank into which the trustee is to pay any monies received by him, and the sum which he may retain in his hands."—32 & 33 Vict. c. 71, s. 125, sub-s. (8) (t).

"Where no committee of inspection is appointed, the trustee may act on his own discretion in cases where he would other-

Form of appointment.

Effect of special resolution on property of debtor.

Powers and duties of a trustee in liquidation.

The Bankruptcy Act, 1869, s. 125, sub-s. (7).

*Id.*, sub-s. (8).

*Id.*, sub-s. (13).

(g) Form No. 115.

(r) See this section in full, *ante*, pp. 1435—1438.

(s) *Ante*, pp. 1363—1364.

(t) See this section set out in full, *ante*, pp. 1435—1438.

“ what conditions. In default of any resolution being then come to as to the debtor’s discharge, a general meeting shall be summoned for the purpose of considering the grant thereof, either when the trustee shall see fit, or when the committee of inspection (if any), or when the debtor, with the concurrence of one-fourth in value of his creditors, who have proved, shall require the trustee to summon the same.”—“The Bankruptcy Rules, 1870,” r. 302.

When the debtor is discharged, the trustee is required to send in a report to the registrar, and a certificate of discharge is then given by the registrar, which has the same effect as an order of discharge given to a bankrupt under “The Bankruptcy Act, 1869” (y).

Discharge to be reported.

“The Bankruptcy Rules, 1870,” provide as follows :—

“The resolution to be come to at any such meeting and the report thereof to the registrar, and the debtor’s discharge, shall be according to the form in the schedule.”—“The Bankruptcy Rules, 1870,” r. 303.

Forms of resolution, report, and discharge.

*The Bankruptcy Rules, 1870, r. 303*

The forms provided under this rule are as follows : Resolution of debtor’s discharge (z), report of trustee as to debtor’s discharge (a), and order of debtor’s discharge (b).

It sometimes happens that the creditors think it desirable to transfer the proceedings from the Court in which the same were originated to some other Court. This they have power to do under the following rule of “The Bankruptcy Rules, 1870” :—

Creditors may transfer the proceedings to another Court.

*The Bankruptcy Rules, 1870, r. 288.*

“The creditors assembled at any general meeting may include in their resolution a direction that the proceedings be transferred to any Court other than that in which the same were originated ; and upon any such resolution being filed, the proceedings shall be forthwith transferred by the registrar in accordance therewith ; and the Court to which the same shall have been transferred shall thereafter act in the matter of the proceedings in like manner as if the same had been properly instituted therein in the first instance.”—“The Bankruptcy Rules, 1870,” r. 288.

It has been seen how, at any time after the presentation of a petition, the Court will restrain legal proceedings against the debtor (c). This power will also be exercised *after* the liquidation by arrangement has been resolved upon. On this subject, “The Bankruptcy Rules, 1870,” provide as follows :—

After liquidation by arrangement resolved upon, legal proceedings will be restrained, unless it appear that bankruptcy will be more beneficial.

“Every creditor in respect of a provable debt shall in the event of a liquidation by arrangement being resolved upon, be absolutely restrained from commencing or continuing or enforcing any proceedings whatsoever against the debtor or

(y) 32 & 33 Vict. c. 71, s. 125, sub-s. (10), *ante*, p. 1438.

(z) Appendix V. Form 122.

(a) Appendix V. Form 123.

(b) Appendix V. Form 124.

(c) Rule 260, *ante*, p. 1428.

“liquidation by arrangement, a notice shall be gazetted by the trustee in the form given in the schedule requiring the creditors to send to him their names and addresses, and the particulars of their debts or claims; and on declaring a dividend, a sufficient reserve shall be made by the trustee for such dividend upon all debts or claims notified to him in pursuance of such notice. The trustee shall be also deemed to have notice of the debts of all creditors whose names are inserted in the debtor’s statement of affairs, and (except where any such debt has been adjudicated upon prior to the declaration of the dividend) a similar reserve shall be made in respect thereof.”—“The Bankruptcy Rules, 1870,” r. 312.

Seven days before declaration of dividend, notice thereof to be gazetted.

*The Bankruptcy Rules, 1870, r. 312.*

The notice which this rule requires to be gazetted must be in the form given in the schedule (f).

Form of notice.

“Wherever the trustee shall reject the claim or proof of any creditor he shall give notice to such creditor by post in the form given in the schedule (g) and, where the creditor is resident in Europe the trustee shall be entitled to exclude from dividend any such claimant or creditor whose debt he so rejects, unless such creditor shall, within 14 days from the time at which the trustee’s notice should have been delivered to him in the ordinary course of post, apply to the Court to admit his proof and proceed with such application with due diligence. Where any such creditor is resident beyond the limits of Europe, such length of notice shall be given to him as the Court shall order.”—“The Bankruptcy Rules, 1870,” r. 313.

Trustee to give notice of rejection by him of any proof, and within prescribed time afterwards he may exclude from dividend any claimant or creditor.

*The Bankruptcy Rules, 1870, r. 313.*

“Except as before mentioned, the trustee shall declare dividends amongst such creditors only as have proved their debts up to the time of such declaration of dividend, and no creditor who has omitted to prove his debt or to send to the trustee the particulars of his claim, or whose name does not appear in the debtor’s statement shall be entitled to disturb any such dividend, or to make any claim in respect thereof against the trustee, but upon proof of his debt any such creditor shall be entitled to receive the same prior to the payment of any further dividend to the other creditors.”—“The Bankruptcy Rules, 1870,” r. 314.

Creditors who have omitted to prove debts or send notice thereof cannot disturb dividend already declared.

*The Bankruptcy Rules, 1870, r. 314.*

It has already been seen (h) that before a resolution as to liquidation has been passed, the debtor may, if the Court think fit, be made a bankrupt (i). This course, can, however, be adopted at any stage of the proceedings. On this subject, “The Bankruptcy Act, 1869,” provides as follows :—

Debtor may at any stage of proceedings be made a bankrupt.

“If it appear to the Court in satisfactory evidence that the

(f) Appendix V. Form 125.

(g) Form No. 126.

(h) *Ante*, p. 1430.

(i) *Rule, 266, ante*, p. 1430.

position are exactly the same as for a liquidation by arrangement until the time arrives for the passing of a resolution (*m*). Consequently, it will be quite unnecessary to repeat the regulations on the subject, and only occasional references thereto will be made.

composition down to first meeting are same as on liquidation.

It may be as well to mention at once that the proceedings for composition, with which this section is concerned, are altogether different from those which are taken when, *after adjudication in bankruptcy*, the trustee, with the sanction of a special resolution of the creditors, accepts any composition offered by the bankrupt (*n*). These latter proceedings have already been referred to (*o*). And at present we have only to deal with composition by extraordinary resolution, after proceedings instituted by the debtor himself for composition or liquidation by arrangement.

And differ altogether from compositions accepted on a bankruptcy.

The first general meeting of creditors having assembled, and the chairman having been elected, the next thing to be done is, if the creditors desire it, to pass a resolution that a composition shall be accepted in satisfaction of the debts due to them from the debtor. If there are joint and separate creditors, separate meetings must be convened and separate resolutions passed, as we have already seen (*p*). The following section of "The Bankruptcy Act, 1869," indicates how an extraordinary resolution to accept composition is to be passed:—

Enactments governing resolution to accept a composition.

"The creditors of a debtor unable to pay his debts may, without any proceedings in bankruptcy, by an extraordinary resolution, resolve that a composition shall be accepted in satisfaction of the debts due to them from the debtor.

*The Bankruptcy Act, 1869, s. 126.*

"An extraordinary resolution of creditors shall be a resolution which has been passed by a majority in number and three-fourths in value of the creditors of the debtor, assembled at a general meeting to be held in the manner prescribed, of which notice has been given in the prescribed manner, and has been confirmed by a majority in number and value of the creditors assembled at a subsequent general meeting, of which notice has been given in the prescribed manner, and held at an interval of not less than seven days nor more than fourteen days from the date of the meeting at which such resolution was first passed.

"In calculating a majority for the purposes of a composition under this section, creditors whose debts amount to sums not exceeding ten pounds shall be reckoned in the majority in value, but not in the majority in number, and the value of the debts of secured creditors shall, as nearly as circumstances admit, be estimated in the same way, and the same descrip-

(*m*) *Ante*, p. 1425.

(*n*) 32 & 33 Vict. c. 71, s. 28, *ante*, pp. 1402—1403.

(*o*) *Ante*, pp. 1402—1403.

(*p*) Rule 285, *ante*, p. 1431, and Rule 286, *ante*, p. 1431.

“ in a summary manner by any person interested, and any disobedience of the order of the Court made on such motion shall be deemed to be a contempt of Court.

“ Rules of Court may be made in relation to proceedings on the occasion of the acceptance of a composition by an extraordinary resolution of creditors in the same manner and to the same extent and of the same authority as in respect of proceedings in bankruptcy.

“ If it appear to the Court on satisfactory evidence that a composition under this section cannot in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, the Court may adjudge the debtor a bankrupt, and proceedings may be had accordingly.”—32 & 33 Vict. c. 71, s. 126.

It is to be noticed that the above section provides that where the creditors decide to accept composition, they must pass, not, as in cases of liquidation by arrangement, a *special* resolution, but an *extraordinary* resolution. And an *extraordinary* resolution is described by the above section to be one which has been *passed* by a majority in number and three-fourths in value of the creditors of the debtor, assembled at a general meeting, and has been *confirmed* by a majority in number and value of the creditors assembled at a subsequent general meeting, held at an interval of not less than seven days nor more than fourteen days from the date of the meeting at which such resolution was first passed. The mode of calculating a majority for the purposes of a composition is specified in the third paragraph of the above section, and must be strictly adhered to.

Construction  
of s. 126.

And it is provided, that the value of the debts of secured creditors shall, as nearly as circumstances admit, be estimated in the same way, and the same description of creditors shall be entitled to vote as in bankruptcy. Moreover, it is to be noticed, that in cases of composition by an individual debtor, his creditors and debts shall be deemed to be and include not only those creditors to whom, or those debts in respect of which, he is individually responsible, but also those creditors and debts to whom or in respect of which he is also responsible jointly with any other person or persons; and the statutory majority required for the purpose of any resolution shall be a collective majority of the whole of such joint and separate creditors assembled at any meeting (*q*). But, in cases of composition, the terms of the resolution as regards joint and separate creditors need not be identical, and, if so desired, the resolution may provide for the payment of a composition to the separate creditors, and that the rights of the joint creditors shall not be affected thereby (*r*).

(*q*) Rule 287, *ante*, p. 1432.  
(*r*) *Ib.*

As regards the description, in the debtor's statement, of debts arising on bills of exchange or promissory notes, "The Bankruptcy Act, 1869," provides as follows :—

It has been held that if the debtor does not produce at *each* meeting of the creditors a statement of his assets and debts, with the names and addresses of his creditors, a resolution to accept a composition cannot be accepted (*y*).

Resolutions void unless statement produced.

Any mistake made inadvertently by a debtor in the statement, may, it is to be noticed, be corrected after the prescribed notice has been given, with the consent of a general meeting of his creditors (*z*). It has been held that an application to amend the statement made after first instalment of composition had become payable was made too late (*a*).

Mistakes in statement may be corrected.

The resolution to accept a composition having been *passed* at the first general meeting, it is necessary to *file* it with the statement of the debtor's affairs, proofs and proxies within three days and *before* the subsequent meeting is held at which the resolution may be confirmed. On this subject "The Bankruptcy Rules, 1870," provide as follows :—

Resolution accepting composition must be filed.

"Where, at the first general meeting, a resolution has been passed, resolving that a composition shall be accepted in satisfaction of the debts due to the creditors from the debtor, such resolution shall be filed with the statement of the debtor's affairs, proofs, and proxies within three days, and another general meeting shall be appointed to be held at an interval of not less than seven days nor more than fourteen days from the date of the meeting at which the resolution was first passed. The second general meeting shall be held at the same place as the first general meeting unless the resolution at such first general meeting shall have otherwise directed. Notice thereof according to the form in the schedule shall be given to every creditor in manner provided with respect to first general meetings, with this addition, that the notice to every creditor who was not present or represented at the first general meeting shall be sent by registered post letter. Such notices shall be sent on or before the sixth day prior to the day on which the second meeting is appointed to be held. In the event of notice not being requested to be sent by the debtor or his attorney on the sixth day prior to the second meeting, any creditor may file a similar request, desiring the registrar to forward the notices summoning the second meeting; and in the event of any meeting being so summoned it shall be sufficient if the notices are signed by the registrar and sealed, and are posted on the third day prior to the meeting." —"The Bankruptcy Rules, 1870," r. 282.

Resolution to be filed and second general meeting convened. *The Bankruptcy Rules, 1870, r. 282.*

(*y*) 32 & 33 Vict. c. 71, s. 125, *ante*, pp. 1435—1438.

(*z*) *Ex parte Matthews*; *Re Angel*, L. R. 10 Ch. App. 304; 44 L. J. Bank. 128.

(*a*) *Ex parte Sidey*, 34 L. T. (N. S.) 401.

“assembled may confirm the resolution passed at the first general meeting, or they may pass a special resolution that the affairs of the debtor are to be liquidated by arrangement and not in bankruptcy.”—“The Bankruptcy Rules, 1870,” r. 283.

A form of resolution at the second general meeting is provided (n).

After the extraordinary resolution has been confirmed at the second general meeting, it must be registered. For, until this takes place, the resolution is of no validity. On this subject “The Bankruptcy Act, 1869,” provides as follows:—

“The extraordinary resolution, together with the statement of the debtor as to his assets and debts, shall be presented to the registrar, and it shall be his duty to inquire whether such resolution has been passed in manner directed by this section, and if satisfied that it has been so passed he shall forthwith register the resolution and statement of assets and debts, but until such registration has taken place such resolution shall be of no validity; and any creditor of the debtor may inspect such statement at prescribed times, and on payment of such fee, if any, as may be prescribed.”—32 & 33 Vict. c. 71, s. 126 (o).

“The Bankruptcy Rules, 1870,” provide, by the following rule, that the extraordinary resolution, together with the debtor’s statement and the proofs and proxies, shall be filed by the person having charge of the registration:—

“The person to whom the registration of the special or extraordinary resolution may have been entrusted, or the debtor or his attorney, as the case may be, shall file the same in Court, together with the debtor’s statement of affairs and all proofs and proxies, within three days after he shall have received the same, or in default thereof shall be summoned before the Court, and some person able to depose thereto shall verify and identify the resolutions, statement, proofs, and proxies so filed as being the whole of the resolutions, statement, proofs, and proxies come to and produced at the meeting or meetings when such special or extraordinary resolutions were passed.”—“The Bankruptcy Rules, 1870,” r. 284.

A resolution cannot be filed or registered, it is to be noticed, unless it be accompanied by an affidavit of verification (p).

After the registration of composition resolutions, the composition proceedings are no longer pending (q).

The registration of an extraordinary resolution is, in the

passed at first general meeting may be confirmed or liquidation by arrangement resolved upon.

*The Bankruptcy Rules, 1870, r. 283.*

Resolution accepting composition must, when confirmed at second general meeting, be registered.

*The Bankruptcy Act, 1869, s. 126.*

—And filed.

*The Bankruptcy Rules, 1870, r. 284.*

Practice on registration.

Effect of registration.

—Conclusive

(n) Appendix V. Form 118.

(o) See this section set out in full, *ante*, pp. 1449—1451.

(p) *Ex parte Davis*, L. R. 7 Ch. 526.

(q) *Pashler v. Vincent*, L. R. 8 Ch. D. 825.



The mode of enforcing the provisions of any composition, made in pursuance of section 126 of "The Bankruptcy Act, 1869" (a), is by motion to the Court. The enactment on this subject is as follows :—

"The provisions of any composition made in pursuance of "this section may be enforced by the Court on a motion made "in a summary manner by any person interested, and any disobedience of the Order of the Court made on such motion "shall be deemed to be a contempt of Court."—32 & 33 Vict. c. 71, s. 126 (a).

It has been held, with reference to the above enactment, that the creditor is not restricted to the summary remedy by motion thereby provided (b). But that it is competent to a creditor, notwithstanding a resolution for a composition, to sue for his original debt, where the debtor has failed to pay or tender the composition within the time agreed on, or within a reasonable time (c).

Even after the passing of an extraordinary resolution to accept composition, the Court may adjudge the debtor a bankrupt. On this subject "The Bankruptcy Act, 1869," provides as follows :—

"If it appear to the Court on satisfactory evidence that a "composition under this section cannot in consequence of legal "difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, the Court "may adjudge the debtor a bankrupt, and proceedings may be "had accordingly."—32 & 33 Vict. c. 71, s. 126 (d).

The power given to the Court by the above enactment is a discretionary power, and is independent of the commission by him of an act of bankruptcy, and it may be exercised more than six months after the filing of the petition (d*u*). A declaration by the debtor of his inability to pay one of the instalments of the composition at the time appointed is a sufficient ground for the exercise of the power (e). It is, however, necessary for a creditor who desires to make the debtor a bankrupt to show that there are legal difficulties, or that the creditors are prejudiced, and where he cannot prove this in a case where the debtor has made default in payment of one instalment, his sole remedy is to sue at law for the remaining instalment of the composition (f).

Where bankruptcy occurs pending proceedings for composition with creditors, the proper costs incurred in relation to such

Extraordinary resolution to accept composition may be enforced by the Court.

*The Bankruptcy Act, 1869, s. 126.*

Construction of above enactment.

Debtor may at any time be adjudicated bankrupt.

*The Bankruptcy Act, 1869, s. 126.*

Decisions as to such power of adjudication.

Costs in the event of bankruptcy intervening.

(a) See this section set out in full, *ante*, pp. 1449—1451.

(b) *Edwards v. Coombe*, L. R. 7 C. P. 519.

(c) *Ib.*

(d) See this section in full, *ante*, pp. 1449—1451.

(d*d*) *Ex parte Marland, Re Marland*, L. R. 20 Eq. 777.

(e) *Ex parte Charlton; In re Charlton*, L. R. 6 Ch. D. 45.

(f) *In re Shiers; Ex parte Shiers*, L. R. 7 Ch. D. 416.

EXTRACT FROM  
APPENDIX II.

ADMIRALTY FORMS.

243.

PRÆCIPUE ON ENTRY OF PLAINT.

Admiralty Jurisdiction.

In the County Court of                      holden at  
I, L. M., solicitor, hereby desire to commence an action for [state the nature of the suit], on behalf of [state name, address, and description of plaintiff], against [if the owner or owners be not known, state the owner or owners unknown of the property to which the action relates, describing its name and nature and where it then is; if known, state name, address, and description of party proceeded against, the name and nature of the property to which the suit relates, and where it is], in the sum of [state sum in letters] pounds. And I consent that all instruments and documents in the said action may be left for me at [state address], [add, where so desired, and I require the summons to be served by the Bailiff of the Court].

Practice,  
p. 707.

Dated the                      day of                      18

[To be signed by the party, his solicitor,  
or his clerk for him.]

244.

PRÆCIPUE FOR PERMISSION FOR SUIT TO BE HEARD AT A SPECIAL PLACE.

Admiralty Jurisdiction.

In the County Court of                      holden at  
[Title of Action.]

I, X. Z., solicitor, do pray that permission may be granted for the hearing of this suit at [here state the name of the place at which and description of the building in which it is desired that the sitting should be held, and if the building is not one in which the County Court ordinarily sits add, and I undertake to hire the use of the said building at my expense, to be allowed as costs in the suit if the Court shall allow thereof].

Practice,  
p. 268.

Dated this                      day of                      18

[To be signed by the party, his solicitor,  
or his clerk for him.]

ADMIRALTY FORMS.

247.

WARRANT OF ARREST AND DETENTION.

Admiralty Jurisdiction.

In the County Court of                      holden at

(Seal.)

[Title of Action.]

Whereas an action has been instituted in this Court on behalf of *A. B.* *Practice,*  
of                      against the owner or owners of [*state description and name of vessel or* *p. 773.*  
*property*] in the sum of [*state sum in letters*] pounds. These are therefore to  
require and order you to arrest the said                      and to keep the same under safe  
arrest until you shall receive further orders from this Court.

Given under the seal of the Court this                      day of                      18 .

By the Court.

Registrar of the Court.

To the High Bailiff of the said Court  
and others the Bailiffs thereof.

248.

BAIL BOND.

Admiralty Jurisdiction.

In the County Court of                      holden at

[Title of Action.]

Whereas an action for                      has been instituted in this Court on behalf of *Practice,*  
*A. B.* of                      , against                      *p. 774.*

Now therefore we [*state names, addresses, and description of sureties*] jointly  
and severally submit ourselves to the jurisdiction of the said Court, and consent  
that if he [*or they*] the said                      shall not pay what may be adjudged against  
him [*or them*] in the said action, with costs, execution may issue forth against us,  
our heirs, executors, and administrators, our goods and chattels, for a sum not  
exceeding [*state sum in letters*] pounds.

[Signatures of Sureties.]

The bail bond was signed by the said                      , and                      the sureties,  
the                      day of                      18 .

Before me,

Registrar of the Court,  
or one of his clerks.

## ADMIRALTY FORMS.

252.

### ORDER OF TRANSFER TO HIGH COURT OF JUSTICE.

#### Admiralty Jurisdiction.

In the County Court of                      holden at                      .  
[Title of Action.]                      (Seal.)                      *Practice,*  
pp. 747-8.

Whereas it appears that the subject of this action exceeds the limit in respect of amount of the Admiralty jurisdiction of this Court [or state otherwise as the case may be], it is ordered that this suit be transferred to the Probate, Divorce, and Admiralty Division of the High Court of Justice, together with the proceedings that have been had therein in this Court.

Given under the seal of the Court this                      day of                      18   .  
By the Court.                      Registrar of the Court.

253.

### ORDER OF TRANSFER TO COUNTY COURT OF THE HIGH COURT OF JUSTICE.

#### Admiralty Jurisdiction.

In the County Court of                      holden at                      .  
[Title of Action.]                      (Seal.)                      *Practice,*  
pp. 747-8.

Whereas it hath been made to appear that the action could be more conveniently prosecuted in the County Court of                      holden at                      , appointed to have Admiralty jurisdiction [or, in the High Court of Justice], it is ordered that this action be transferred to the said Court, together with the proceedings that have been had therein in this Court.

Given under the seal of the Court this                      day of                      187   .  
By the Court.                      Registrar of the Court.

254.

### JUDGMENT OR ORDER.

#### Admiralty Jurisdiction.

In the County Court of                      holden at                      .  
[Title of Action.]                      (Seal.)                      *Practice,*  
p. 779.

It is this day adjudged that the plaintiff *A. B.* of                      do recover against the defendant [or, defendants] *C. D.* of                      the sum of                      pounds [in an action for salvage, for services rendered to the above vessel; or in an action for towage, for services rendered in towing the said vessel; or in an action for necessaries, for necessaries supplied to the said vessel; or in an action for wages, for wages in respect of services rendered on board the said vessel; or in an action for damage to cargo, for damage caused to the cargo carried in the said vessel; or in an action for damage by collision, for damage caused to the said vessel by the defendant's vessel the [the description and name of the vessel which caused the damage], together with the costs of this action.

And it is ordered that the defendant [or, defendants] do pay the same to the plaintiff or his solicitor within                      days, [add where the name of the defendant is known, and that in default thereof the registrar shall upon the application of the plaintiff or his solicitor issue a warrant of execution against the vessel or property of the defendant].

Given under the seal of this Court this                      day of                      18   .  
By the Court.                      Registrar of the Court.

14562

# ADMIRALTY FORMS.

257.

## ORDER FOR TRANSFER OF SALE TO HIGH COURT OF JUSTICE.

Admiralty Jurisdiction.

In the County Court of                      holden at                      .

[*Title of Action.*]

(*Seal.*)

*Practice,*  
p. 782.

Whereas in an action instituted in this Court on behalf of *A. B.* of  
against [*state name of defendant*] the Judge of this Court has ordered [*here insert*  
*the terms of the decree or order*]. And whereas the plaintiff [*or, defendant*] in the  
said suit is desirous that the sale of the vessel should be conducted in the Probate,  
Divorce, and Admiralty Division of the High Court of Justice, and has given  
security for the sum of ten pounds. Now I, *A. B.*, solicitor, pray that an order  
to transfer the proceedings for sale to the said division of the High Court of  
Justice do issue.

Dated the                      day of                      18                      .

Signature of Solicitor.

I hereby certify that the security above mentioned has been duly completed.

Registrar of the Court.

I hereby order the transfer to be made as prayed.

Judge of the Court.

258.

## PRECIPUE FOR PAYING IN MONEY.

Admiralty Jurisdiction.

[*Title of Action.*]

In the County Court of                      holden at                      .  
I, *A. B.*, of                      do pay the sum of [*state sum in letters*] pounds into Court  
in this action at the request and by the authority of                      , he having agreed  
to pay [*or, tender*] the same in settlement of the claim of the plaintiff [*or, as the*  
*case may be*].

*Practice,*  
p. 770.

Dated the                      day of                      18                      .

[*To be signed by the party, his solicitor,*  
*or his clerk for him.*]

259.

## SUMMONS TO ASSESSORS.

Admiralty Jurisdiction.

(*Seal.*)

In the County Court of                      holden at                      .

[*Title of Action.*]

*Practice,*  
pp. 743-4.

You are hereby summoned to appear and serve as an assessor in this Court at  
the                      on the                      day of                      18                      , at the hour of                      in  
the                      noon, to assist the Judge of this Court in the hearing and de-  
termining of this suit, and in default of attendance you will be liable to a penalty  
of a sum not exceeding five pounds under section 15 of "The County Courts Ad-  
miralty Jurisdiction Act, 1868."

Dated this                      day of                      18                      .

Registrar of the Court.

To  
of                      .

# APPENDIX IV.

## BANKRUPTCY ACT, 1869.

### ORDER REGULATING FEES

TO BE TAKEN UNDER

THE BANKRUPTCY ACT, 1869.

I, the Right Honourable, William Page, Baron Hatherley, Lord High Chancellor of Great Britain, Do, by virtue of the powers vested in me by the Bankruptcy Act, 1869, prescribe that the scale of fees hereto annexed shall be the scale of fees to be charged for any business done by any Court or officer under the said Act in lieu of all other fees.

HATHERLEY, C.

#### SCALE OF FEES.

TABLE A.

	Stamp Duty.
Every declaration by a debtor of inability to pay his debts . . . . .	£ s. d. 0 5 0
Every debtor's summons . . . . .	0 5 0
Every bankruptcy petition . . . . .	5 0 0
Every bond with sureties . . . . .	0 5 0
Every affidavit filed, other than proof of debts . . . . .	0 1 0
Every subpoena . . . . .	0 1 0
Every petition under sections 125 or 126 of the Act . . . . .	1 0 0
For despatching notice to creditors or others, exclusive of postage, each notice . . . . .	0 0 3
Every application for an order of discharge in bankruptcy or certificate of discharge in liquidation . . . . .	1 0 0
Every special resolution presented to a registrar for registration under section 125, paragraph 4, stamps denoting a duty computed at the rate of five shillings upon 100 <i>l.</i> or fraction of 100 <i>l.</i> on the gross amount of the estimated assets, not exceeding a total duty of 200 <i>l.</i> . . . . .	—
Every extraordinary resolution presented to a registrar under section 126, stamps denoting a duty computed at the rate of five shillings upon 100 <i>l.</i> or fraction of 100 <i>l.</i> on the gross amount of the composition, not exceeding a total duty of 200 <i>l.</i> . . . . .	—
	2

# APPENDIX IV.

Scale of Fees, Table A.—*continued.*

	Stamp Duty.
	£ s. d.
Every application for search for proceedings other than by petitioner, trustee, or bankrupt . . . . .	0 1 0
Every application to a Court . . . . .	0 5 0
Every office copy, each folio of 72 words . . . . .	0 0 2
On first certified statement showing assets realized, forwarded by a trustee to the comptroller under section 55 of the Act, stamps denoting a duty computed at the rate of five shillings upon 100 <i>l.</i> or fraction of 100 <i>l.</i> on the gross amount of the assets realized and brought to credit, and on any subsequent statement, stamps denoting a duty computed at the rate of one shilling upon 20 <i>l.</i> or any fraction of 20 <i>l.</i> on the gross amount of additional assets realized and brought to credit in any such subsequent statement.	—
On every record of trial . . . . .	5 0 0
or such less sum as the Court may specially order.	
Every allocatur by any officer of the Court for any costs, charges, or disbursements, where such bill of costs shall not exceed 5 <i>l.</i> . . . . .	0 1 6
Exceeding 5 <i>l.</i> and not exceeding 10 <i>l.</i> . . . . .	0 2 6
" 10 <i>l.</i> " 20 <i>l.</i> . . . . .	0 5 0
" 20 <i>l.</i> " 30 <i>l.</i> . . . . .	0 7 6
" 30 <i>l.</i> " 50 <i>l.</i> . . . . .	0 10 0
" 50 <i>l.</i> " 100 <i>l.</i> . . . . .	0 15 0
" 100 <i>l.</i> " 150 <i>l.</i> . . . . .	1 0 0
" 150 <i>l.</i> " 200 <i>l.</i> . . . . .	1 10 0
" 200 <i>l.</i> " 300 <i>l.</i> . . . . .	2 0 0
" 300 <i>l.</i> " 500 <i>l.</i> . . . . .	3 0 0
" 500 <i>l.</i> " — . . . . .	5 0 0

TABLE B.

	£ s. d.
Attending Court each sitting . . . . .	0 2 0
Serving every debtor's summons, bankruptcy petition, subpoena, order, notice, or other process within two miles, including affidavit of service . . . . .	0 3 6
Preparing advertisement for <i>Gazette</i> or local paper . . . . .	0 3 6
Agent's charge for insertion in <i>Gazette</i> . . . . .	0 1 0
Executing every warrant of seizure, or search warrant, or warrant of apprehension, or order of commitment, within two miles of Court house . . . . .	0 10 0
Keeping possession—for each day the man is actually in possession; including affidavit of possession being actually kept . . . . .	0 4 6
(3 <i>s.</i> 6 <i>d.</i> of the above sum is to be paid to the man in possession, and his receipt produced.)	
High bailiff's, or in the London Bankruptcy Court officer's, man travelling to place of possession, or to execute a warrant of or order of commitment, or to serve a summons, petition, order, notice, subpoena, or other process, or for any other purpose specially directed by the Court, per mile . . . . .	0 0 5
His time, per day, where distance exceeds 10 miles . . . . .	0 4 6
His expenses, per day . . . . .	0 4 6
If high bailiff of a County Court or officer of London Bankruptcy Court directed by the Court personally to travel, per mile . . . . .	0 0 7
If high bailiff of a County Court or officer of London Bankruptcy Court directed by the Court personally to travel, his time, per day . . . . .	0 10 0
If high bailiff of a County Court or officer of London Bankruptcy Court directed by the Court personally to travel, his expenses, per day . . . . .	0 10 0

## BANKRUPTCY FEES.

Where an inventory is deemed requisite, and is directed by the Court or trustee to be taken by a high bailiff or officer of the Court, a proper remuneration may be allowed for taking it, having regard to the time occupied, and the nature of the property included in it.

Where no trustee is appointed by the creditors, or where there is a vacancy in the office of trustee, and the bankruptcy is carried on with the aid of the registrar as trustee: for realization of the estate 5*l.* per cent. on the first amount of 100*l.* or any less sum realized by the registrar; 2½ per cent. on the next amount of 400*l.* or any less sum; 1 per cent. on the next amount of 500*l.* or any less sum; and ½ per cent. on all further sums.

On dividend 2*l.* per cent. on the first amount of 1,000*l.* or any less sum actually divided, and 1 per cent. on all further sums.

### TABLE C.

The fees and allowances payable on proceedings had after the thirty-first day of December, 1869, in respect of any matter which was pending in any Court having jurisdiction in bankruptcy on the said day shall be the same as if those proceedings had been taken before such day, and shall be applied to the same purposes.

---

We, the undersigned Lords Commissioners of Her Majesty's Treasury, do hereby sanction the foregoing scale of fees, and do direct that the fees to be taken by stamps shall be those mentioned in Table A., and that the fees mentioned in Table B. shall be taken in money, and that the fees and allowances referred to in Table C. shall be taken by stamps or money according as they have hitherto been taken.

And we further direct that the stamp shall be affixed or the money paid in respect of every fee before the proceeding is had in respect of which the fee is payable, and that the charge to be made by the *London Gazette* for the insertion of each notice authorized by the Act or Rules shall be ten shillings.

W. P. ADAM.

W. H. GLADSTONE.

10th August, 1871.



## BANKRUPTCY FORMS.

- No.
40. Bond of Trustee.
41. Certificate of Appointment of Trustee.
42. Notice in *Gazette* of the Appointment of Trustee and of day for public Examination of Bankrupt.
43. Admission of Debt by Debtor of Bankrupt.
44. Order to pay admitted Debt.
45. Memorandum of public Examination of Bankrupt.
46. Notice of Meeting to be held on Resignation of Trustee.
47. Minutes at Meeting for receiving Resignation of Trustee, &c.
48. Report and Certificate of Appointment of Trustee to fill a Vacancy caused by a Resignation.
49. Notice in *Gazette* of intended Dividend.
50. Application by Creditor for Order for Trustee to pay Dividend and Order thereon.
51. Report of Trustee for closing Bankruptcy.
52. Order on Report of Trustee as to the closing of a Bankruptcy.
53. Application for Directions by Trustee.
54. Order on Application of Trustee for Directions.
55. Notice in *Gazette* of Meeting to authorize the Trustee to accept a Composition.
56. Order to stay Proceedings on a Composition, &c.
57. Application to annul Adjudication under Sect. 28.
58. Order annulling Adjudication under Sect. 28.
59. Notice in *Gazette* and paper of Bankruptcy having been annulled.
60. Application for Release by Trustee and Order thereon.
61. Notice in *Gazette* of day a Bankrupt will apply for his Discharge.
62. Application for Order of Discharge where a Dividend of not less than 10s. has been paid.
63. Application for Order of Discharge where the failure to pay a Dividend of 10s. arose through Negligence or Fraud of Trustee.
64. Application for Order of Discharge on a Special Resolution that the Bankruptcy or the failure to pay a Dividend of 10s. arose from circumstances for which the Bankrupt should not be held responsible.
65. Application for an Order of Discharge during continuance of Bankruptcy.
66. Memorandum of Application for Order of Discharge.
67. Order of Discharge.
68. Notice to Creditors of a Bankrupt, who has paid an additional Sum after close of his Bankruptcy, making up a Dividend of 10s. in the Pound, that he will apply for an Order of Discharge.
69. Notice in *Gazette* of Order of Discharge.
70. Notice in *Gazette* that a Creditor seeks to enforce Payment of his Debt out of the Property of an undischarged Bankrupt.
71. Search Warrant.
72. Warrant of Seizure.
73. Warrant against Debtor about to quit England, &c.
74. Subpœna (London Bankruptcy Court).
75. Subpœna or Summons to Witness in County Court.
76. Summons under Sect. 96 (*in a County Court*).
77. Order setting aside Pay., Pension, &c. under Sect. 89.
78. Notice to Bankrupt under Sect. 90.
79. Order setting aside Salary or Income under Sect. 90.
80. Application for Enforcement of Provision in a Composition.
81. Affidavit in support of Application for Enforcement of Provisions of a Composition under Sect. 28 or 126.
82. Order for Enforcement of Provisions in a Composition.
83. Application by Trustee for Committal of Bankrupt or other Person.
84. Affidavit in support of Application for Committal of Bankrupt for Contempt under Sect. 19.
85. Affidavit of Trustee under Sect. 93.
86. Affidavit of Person interested in a Composition for Committal.
87. Notice of Application for Committal under Sect. 19.

## APPENDIX V.

No.

88. Notice of Application for Committal under Sect. 93.
89. Notice of Application for Committal under Sects. 28, 126.
90. Order of Committal under Sect. 19.
91. Order of Committal under Sect. 93.
92. Order of Committal under Sect. 28 or 126.
93. Warrant of Committal for Contempt.
94. Order for Discharge from Custody on Contempt.
95. Warrant to apprehend a Person summoned under Sect. 96.
96. Order to Postmaster-General.
97. Certificate to Speaker of the House of Commons under Sect. 122.
98. Order to Summon a Common Jury.
99. Order for a Special Jury.
100. Form of Oath to be taken by the Usher of the Court on Jury retiring to consider their Verdict.
101. Register of Bankruptcies in London Bankruptcy Court.
102. Bankruptcy Petition Book to be kept by Chief Registrars of the London Bankruptcy Court, and Registrars of the County Courts.
103. Debtor's Summons Book to be kept by the Chief Registrar in the London Bankruptcy Court or a Registrar of a County Court.
104. Estate Book.
105. Annual Return to be made by Trustees.
106. Petition under Sects. 125, 126.
107. Affidavit in support of Petition under Sects. 125, 126.
108. Notice to Creditors of General Meeting.
109. Affidavit to be annexed to the Notice summoning First General Meeting.
- 109<sup>n</sup>. Proxy when not added to Proof under Liquidation.
110. Request with List of Creditors.
111. Notice for *Gazette*.
112. Order changing Place of Meeting.
113. Nomination of Receiver or Manager by Creditors.
114. List of Creditors assembled to be used at every General Meeting.
115. First General Meeting where Liquidation by Arrangement resolved on.
116. First General Meeting where Composition resolved on.
117. Notice concerning Second General Meeting.
118. Resolution at Second General Meeting.
119. To be added to Statement of Affairs in cases under Sect. 126 where necessary.
120. Form of Affidavit to be used upon Registration of a Special or Extraordinary Resolution.
121. Certificate of Trustee's Appointment.
122. Resolution for Debtor's Discharge.
123. Report of Trustee as to Debtor's Discharge.
124. Debtor's Discharge.
125. Notice to Creditors to come in and prove their Debts.
126. Notice to Claimant of Trustee's rejection of his Claim.
127. Affidavit of computed Amount of estimated Assets or Composition.
128. Precept on issuing Execution.
129. Writ of Fieri Facias on an Order for Payments of Debt admitted in Court to be due to the Estate of a Bankrupt.
130. Writ of Fieri Facias on an Order for Payment by Instalments of Debt admitted in Court to be due to the Estate of a Bankrupt.
131. Writ of Fieri Facias on an Order for Payment of Debts admitted in Court to be due to the Estate of a Bankrupt, and Costs assessed by the Court.
132. Writ of Fieri Facias on an Order for Payment of Costs to be taxed.
133. Writ of Venditioni Exponas.
134. Writ of Elegit on an Order for Payment of a Debt admitted in Court to be due to the Estate of a Bankrupt.
135. Writ of Elegit on an Order for Payment of a Debt admitted in Court to be due to the Estate of a Bankrupt, and of Costs assessed by the Court.
136. Writ of Elegit on an Order for Payment of Costs to be taxed.

## BANKRUPTCY FORMS.

### BANKRUPTCY RULES, 1871.

No.

1. Notice to Trustee at instance of Comptroller.
2. Order of Discharge.
3. Notice in *Gazette* of Dividend declared.
4. Form of Affidavit on nomination of Receiver by Creditors.
5. Order for Payment of Moneys out of Bank of England.
6. Certificate of no Receipts or Payments by Trustees.
7. Affidavit of no Receipts or Payments by Trustees in cases where there is no Committee of Inspection.

*The following Forms are not given in the Rules, but have been specially prepared and approved.*

137. Particulars of Demand and Notice requiring Payment.
138. Affidavit as to Election of Chairman at Meeting of Creditors.
139. Notice in *Gazette* of the Appointment of Trustee under Liquidation.
140. Order restraining Action, &c., under Liquidation.
- 140A. Affidavit in support of Application for restraining Order under Liquidation.
141. Application under Liquidation.
142. Affidavit as to Posting Notices to Creditors.
143. Notice of Application to register Resolutions where proof objected to.
144. Notice of Application to register Resolution.
145. Affidavit that Vote of Creditor absent from Meeting had not affected Resolution.
146. Notice of Motion for Injunction restraining Proceedings.
147. Affidavit of Service of Notice of Motion.
148. List of Registered Letters.
149. Affidavit as to Trading.
150. Affidavit as to Petitioning Creditor's Debt.
151. Affidavit as to Act of Bankruptcy by Declaration of Inability to Pay.
152. Bankrupt's Summons.
153. First Meeting, Memorandum of Registrar as to.
154. Debtor's Consent to Adjudication.
155. Examination Heading.
156. Order for Adjournment of Examination.
157. Form of Common Order.
158. List of Creditors who have proved Debts.
159. Order for Adjournment of Debtor's Summons.
160. Certificate for Trustee of not having received or paid.
- 160A. Application for Proofs off File by Trustee.
161. Order for substituted Service of Petition.
162. Order for substituted Service of Debtor's Summons.
163. Affidavit of fitness of Receiver or Manager.
164. Summary of Receipts and Payments by Trustee.
165. Order for substituted Service of Petition by Advertisement.
166. Order for substituted Service of Debtor's Summons by Advertisement.
167. Affidavit of Search.
168. Affidavit of no separate Debts or Estate.
169. Affidavit verifying Charges.
170. Certificate by Trustee that he has not received any Remuneration.
171. Certificate by Trustee as to Charges.
172. Notice of Application to dismiss Debtor's Summons.
173. Request for Proceedings.
174. Notice of Dividend under Liquidation.
175. Summons of Debtors to Estate.



## BANKRUPTCY FORMS.

### No. 3.

*Affidavit for summoning Debtors in partnership.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of \_\_\_\_\_] holden Sect. 7.  
at \_\_\_\_\_].  
I, *C. D.* of \_\_\_\_\_ make oath and say:—  
1. That *A. B.* and *C. D.* are justly and truly indebted to me in the sum of [the Rule 18.  
amount of the debt] for [£c., stating the nature of the debt with certainty and  
precision].  
2. That the said *A. B.* and *C. D.* [where application to a County Court, do not Practice,  
reside or carry on business within the district of the London Bankruptcy Court, p. 1293  
but] reside [or carry on business] at \_\_\_\_\_, within the district of this Court et seq.  
[and where debtors are traders, carry on the trade of \_\_\_\_\_ at \_\_\_\_\_].  
3. That an account in writing of the particulars of my demand was, on or about  
the \_\_\_\_\_ day of \_\_\_\_\_ 187 \_\_\_\_\_, sent by post [or as the case may be] to the said  
*A. B.* and *C. D.*, and that payment of the same has been on more than one occa-  
sion required of them.  
4. That I did, on the \_\_\_\_\_ day of \_\_\_\_\_ instant [or last], apply [or cause  
application to be made] to the said *A. B.* and *C. D.* [or one of them] personally  
[or otherwise, according to the fact], for payment of the said debt.  
Sworn, &c.

**NOTE.**—If the application was made by any other person than the creditor it must be deposed to by such person.

### No. 4.

*Debtor's Summons.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of \_\_\_\_\_] holden Sect. 7.  
at \_\_\_\_\_].  
Victoria by the Grace of God, of the United Kingdom of Great Britain and Ireland  
Queen, Defender of the Faith.  
To *A. B.* [or *A. B.* and *C. D.*] of \_\_\_\_\_  
We warn you that unless within seven days [if a trader, or three weeks if a Rule 17.  
non-trader] after the service of this summons on you, exclusive of the day of such  
service, you do pay to *C. D.* of \_\_\_\_\_, the sum of \_\_\_\_\_ pounds,  
shillings, and \_\_\_\_\_ pence [and to *F. K.* of \_\_\_\_\_, in the county of Practice  
\_\_\_\_\_, the sum of \_\_\_\_\_ pounds, shillings, and \_\_\_\_\_ pence, and p. 1293  
so on if more than two creditors], being the sum [or sums] claimed of you by him et seq.  
[or them], according to the particulars hereunto annexed, for [state considera-  
tion], or shall compound for the same to his [or their] satisfaction, you will have  
committed an act of bankruptcy, in respect of which you may be adjudged a  
bankrupt, on a bankruptcy petition being presented by the said *C. D.* [and *F. K.*],  
unless you shall have, within the time aforesaid, applied to the Court to dismiss  
this summons, on the ground that you are not indebted to him [or them] in the  
sum claimed, or that you are indebted to him [or them] in a sum less than fifty  
pounds.  
Given under the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_  
Registrar.

*To be endorsed on Summons.*

**YOU ARE SPECIALLY TO NOTE,**

That the consequences, which will follow any neglect to comply with the requi-  
sitions contained in the summons, are that you may be adjudged a bankrupt on

## APPENDIX V.

the petition of *C. D.* [and *F. K.*, &c.] should you not pay to, or compound with him [or them] for the sum claimed within seven days [or three weeks, *as the case may be*] from the service of this summons on you.

If, however, you are not indebted to the said *C. D.* [and *F. K.*, &c.] in the sum claimed, or are only indebted to him [or them] in a sum less than fifty pounds, you must make application to the Court within the like number of days to dismiss this summons, by filing with the registrar an affidavit stating that you are not so indebted, or only so to a less amount than fifty pounds, who will thereupon fix a day for the hearing of your application.

Rule 21. *L. M.*, Attorney suing out this summons, carrying on business at \_\_\_\_\_,

or  
This summons is sued out by *C. D.* [and *F. K.*, &c.] in person.

### No. 5.

#### *Affidavit of Service of Debtor's Summons.*

#### THE BANKRUPTCY ACT, 1869.

Rule 63. In the London Bankruptcy Court [or the County Court of \_\_\_\_\_] holden at \_\_\_\_\_.

In the matter of a debtor's summons by *C. D.* of \_\_\_\_\_ [and *F. K.*, &c.] against *A. B.* of \_\_\_\_\_.

*Practice,*  
p. 1295  
*et seq.* I, *L. M.*, of \_\_\_\_\_, make oath and say:—

1. That I did, on the \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_, serve the above-mentioned *A. B.* with a copy of the above-mentioned summons, duly sealed with the seal of the Court, by delivering the same personally to the said *A. B.*

Sworn at, &c. \_\_\_\_\_ *L. M.*

### No. 6.

#### *Substituted Service of Debtor's Summons. Notice in Gazette.*

#### THE BANKRUPTCY ACT, 1869.

Sect. 7. In the London Bankruptcy Court [or the County Court of \_\_\_\_\_] holden at \_\_\_\_\_.

To *A. B.*, of \_\_\_\_\_.

Rule 61. In the matter of a debtor's summons issued against you by *C. D.* of \_\_\_\_\_ [and *F. K.*, of \_\_\_\_\_, &c.]

*Practice,*  
p. 1304  
*et seq.* Take notice, that a debtor's summons having been granted against you by this Court, the Court has ordered that the publication of this notice in the *London Gazette* shall be deemed to be service of such summons on you on the seventh day after such publication.

The summons can be inspected by you on application to this Court.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 187\_\_\_\_.

Registrar.

### No. 7.

#### *Substituted Service of Debtor's Summons. Notice in local paper.*

#### THE BANKRUPTCY ACT, 1869.

Sect. 7. In the London Bankruptcy Court [or the County Court of \_\_\_\_\_] holden at \_\_\_\_\_.

To *A. B.* of \_\_\_\_\_.

Rule 61. In the matter of a debtor's summons issued against you by *C. D.* of \_\_\_\_\_ [and *F. K.* of \_\_\_\_\_, &c.]

*Practice,*  
p. 1304  
*et seq.* Take notice, that a debtor's summons having been granted against you by this Court, the Court has ordered that the publication of a notice of the granting of the summons in the *London Gazette* shall be deemed to be service on you of such summons on the seventh day after such publication.

The summons can be inspected by you on application to this Court.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 187\_\_\_\_.

Registrar.

## BANKRUPTCY FORMS.

## No. 8.

*Affidavit on Application to dismiss Debtor's Summons.*

In the matter of a debtor's summons by *C. D.* [*F. K.*, &c.] against *A. B.* Sect. 7.  
*I, A. B.* of \_\_\_\_\_, make oath and say:—  
That I am not indebted to *C. D.* [and *F. K.*, &c.] in the [aggregate] amount of Rule 19.  
the sum claimed in the summons [or that I am only indebted to *C. D.* [or *F. K.* or *G. H.*] in sum of \_\_\_\_\_, being part of the sum claimed in the summons, or Practice,  
or that I am not indebted to *C. D.* [and *F. K.*, &c.] in such an [aggregate] amount as p. 1298.  
will justify him [or them] in presenting a bankruptcy petition against me].  
Sworn, &c. (Signed) *A. B.*

## No. 9.

*Order on Application to dismiss Debtor's Summons.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of \_\_\_\_\_] at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

holden Sect. 7.

In the matter of a debtor summons by *C. D.* against *A. B.*  
Upon the application of *A. B.* to dismiss this summons and upon reading the affidavit of *A. B.*, and upon hearing *C. D.* (if present), it is ordered that this summons be dismissed [and that the said *C. D.* (or as the case may be) shall pay to the said *A. B.* the sum of \_\_\_\_\_ for costs], [or that the said *A. B.* enter into a bond in the penal sum of [double the alleged debt] with such two sufficient sureties as the Court shall approve of to pay [or deposit with the registrar the sum of \_\_\_\_\_ as security for the payment of] such sum or sums as shall be recovered by *C. D.* [or as the case may be] against the said *A. B.* in any proceedings taken or continued against him for the recovery of the demand mentioned in such summons, together with such costs as shall be given by the Court in which such proceedings are had.

And it is further ordered that all proceedings on this summons shall be stayed until the Court in which the proceedings shall be taken shall have come to a decision thereon.

Given under the seal of the Court this                      day of                      187 .  
By the Court,  
Registrar.

## No. 10.

*Petition.*

THE BANKRUPTCY ACT, 1869.

To the London Bankruptcy Court [or the County Court of \_\_\_\_\_] at \_\_\_\_\_ holden Sect. 6.

The humble petition of *C. D.* of  
Showeth.

That *A. B.* [or where petition filed in other Court than the London Court, That *A. B.* does not reside or carry on business within the district of the London Bankruptcy Court, but] resides [or carries on business] within the district of this Court, that is to say, at [insert the name of the place].

Practice,  
p. 1289  
et seq.

That the said *A. B.* is indebted to your petitioner [*or* petitioners in the aggregate] in the sum of [*set out the amount of the debt* [*or* debts] *and the consideration*].

That your petitioner doth not nor doth any person or persons in his behalf hold any security on the bankrupt's estate or on any part thereof for the payment of the said sum [or, That your petitioner holds security for the payment of [or part of] the said sum, [or that C. D., one of your petitioners, holds security for the payment of the sum of \_\_\_\_\_, and E. F., another of your petitioners, holds security for the payment of the sum of \_\_\_\_\_], but that he [or they] will give up such

## APPENDIX V.

security [or securities] for the benefit of the creditors of *A. B.*, in the event of his being adjudged a bankrupt.

[Or That your petitioner holds security for the payment of [or part of] the said sum, and that he estimates the value of such security at the sum of        pounds.]

That the said *A. B.* has committed an act [or acts] of bankruptcy within six months before the presentation of this petition.

That the act [or acts] of bankruptcy committed by him was or were that [or set out separately the acts of bankruptcy].

Your petitioner therefore humbly prays that on proof of the requisites in that behalf, on the hearing of this petition, the said *A. B.* may be adjudicated a bankrupt.

And your petitioner shall ever pray, &c.

Signed on the        day of        187   , in the presence of *G. H.* Registrar  
of the Court, or *L. M.*        attorney, &c. *C. D.*

*N.B.—Where necessary add an allegation that debtor is a trader. Where the petitioners are partners one may sign it on behalf of himself and co-partners.*

Rule 33.        The above petition having been presented to this Court, on the        day of  
18   , it is ordered that this petition shall be heard at        on the  
day of    187   , at        o'clock in the        noon.

And you the said *A. B.* are to take notice, that should you intend to dispute the truth of any of the statements contained in the petition, you must file with the registrar of this Court a notice showing the grounds upon which you intend to dispute the same, and send by post a copy of the affidavit to the petitioner three days before the day fixed for the hearing.        ♣

### No. 11.

#### *Affidavit of Truth of Statements in Petition.*

##### THE BANKRUPTCY ACT, 1869.

Sect. 80.        In the London Bankruptcy Court [or the County Court of        holder  
at        ].

In the matter of a bankruptcy petition against *A. B.* of        .

*Practitioner,*  
p. 1302  
*et seq.*        I, the petitioner named in the petition hereunto annexed, make oath [if the  
petitioner declare or affirm, alter the form accordingly] and say:—

1. That the several statements in the said petition are within my own knowledge true.

Sworn at, &c.

*C. D.*

*NOTE.—If the petitioner cannot depose that the truth of all the several statements in the petition is within his own knowledge he must set forth the statements the truth of which he can depose to, and file a further affidavit by some person or persons who can depose to the truth of the remaining statements.*

### No. 12.

#### *Affidavit of Truth of Statements in Petition.*

##### THE BANKRUPTCY ACT, 1869.

Sect. 80.        In the London Bankruptcy Court [or the County Court of        holder  
at        ].

In the matter of a bankruptcy petition against *A. B.* of        .

*Practitioner,*  
p. 1302.        We, *C. D., E. F., G. H., &c.*, the petitioners named in the petition hereunto  
annexed, severally make oath and say:—

And first I the said *C. D.* for myself, say:—



## BANKRUPTCY FORMS.

1. That *A. B.* is justly and truly indebted to me in the sum of pounds, as stated in the said before-mentioned petition.

2. That the said *A. B.* committed the act of bankruptcy stated to have been committed by him in the said before-mentioned petition.

And I the said *E. F.*, for myself, say:—

3. That *A. B.* is justly and truly indebted to me in the sum of pounds, as stated in the said before-mentioned petition.

And I the said *G. H.* for myself, say:—

4. That *A. B.* is, &c.

*C. D.*

*E. F.*

***G. H.***

Sworn by the deponents *C. D.*, *E. F.*, and *G. H.*, &c.

*See note to last form.*

No. 13.

*Application for the Appointment of a Receiver, or Manager, and Order thereon.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of  
at ]. holden Sect. 13.

In the matter of a bankruptcy petition against *A. B.* of \_\_\_\_\_  
 I, *C. D.* of \_\_\_\_\_, the petitioner in this matter, do, on the grounds set forth  
 in the annexed affidavit, apply to the Court for the appointment of a receiver of  
 the property of the said *A. B.* [or the appointment of a manager of the business  
 of \_\_\_\_\_, carried on by the said *A. B.* at \_\_\_\_\_], and that such receiver [or  
 manager] be directed to take immediate possession thereof. \_\_\_\_\_ *C. D.*

Rule 31.  
*Practice*,  
 p. 1310.

**Order thereon.**

Upon reading this application and the affidavit therein referred to, it is ordered that *L. M.* of be appointed to collect, get in, and receive the property [and [or or] to manage the business] of the said *A. B.* And it is ordered that the said do take immediate possession of such property [or business], and that he do pass his accounts at such times as may be directed by the registrar of this Court.

Given under the seal of the Court this                      day of                      18 .  
By the Court,  
Registrar.

No. 14.

*Affidavit of Service of Petition.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of \_\_\_\_\_] at \_\_\_\_\_. holden Rule 63.

In the matter of a bankruptcy petition against *A. B.*

I, *L. M.* of \_\_\_\_\_, make oath and say:—

1. That I did, on the                      day of                      187    , serve the above-mentioned *A. B.* with a copy of the above-mentioned petition, duly sealed with the seal of the Court, by delivering the same personally to the said *A. B.*

Sworn at, &c.

**L. M., Bailiff, creditor,  
attorney or his clerk.**

## APPENDIX V.

No. 15.

### *Substituted Service of Petition. Notice in Gazette.*

#### THE BANKRUPTCY ACT, 1869.

Rule 61. In the London Bankruptcy Court [or the County Court of                   ] holden  
at  
To *A. B.*  
*Practice,* Take notice, that a bankruptcy petition has been presented against you to this  
p. 1304. Court, by *C. D.* of                   , and the Court has ordered that the publication of this  
notice in the *London Gazette* shall be deemed to be service of the petition upon  
you; and further take notice that the said petition will be heard at this Court on  
the            day            at            o'clock in the            noon, on which day you  
are required to appear, and if you do not appear the Court may adjudge you  
bankrupt in your absence.  
The petition can be inspected by you on application at this Court.  
Dated this            day of            187            .  
Registrar.

No. 16.

### *Substituted Service of Petition. Notice in local paper.*

#### THE BANKRUPTCY ACT, 1869.

Rule 61. In the London Bankruptcy Court [or the County Court of                   ] holden  
at  
To *A. B.* of                   .  
Take notice, that a bankruptcy petition has been presented to this Court by  
*C. D.*, of                   , and the Court has ordered that the publication of a notice  
of the petition in the *London Gazette* shall be deemed to be service of the petition  
upon you. The petition will be heard at this Court on the            day of  
at            o'clock in the            noon, on which day you are required to appear;  
and if you do not the Court may adjudge you bankrupt in your absence.  
The petition can be inspected by you on application at this Court.  
Dated this            day of            187            .  
Registrar.

No. 17.

### *Notice by Debtor disputing the Truth of Statements on Petition.*

#### THE BANKRUPTCY ACT, 1869.

Rule 36. In the London Bankruptcy Court [or the County Court of                   ] holden  
at  
In the matter of a bankruptcy petition presented against me on the  
day of            18           , by *C. D.* of                    [or and *E. F.* of                   ,  
*G. H.* of                   , &c.]  
*Practice,* I, the above *A. B.*, do hereby give you notice that I intend to dispute that  
p. 1306. adjudication should be made as prayed on the hearing of the petition, at which  
time I intend to dispute the petitioning creditor's debt [or the trading or the act  
of bankruptcy].  
Dated this            day of            187            .  
To *C. D.* of                   , and to                   ,                    *A. B.*  
Registrar of the said Court.

## BANKRUPTCY FORMS.

No. 18.

*Order to stay Proceedings on Petition.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of  
at ]. holden Sect. 9.

In the matter of a bankruptcy petition against A. B. of

Upon the hearing of this petition this day, and the said *A. B.* appearing and denying that he is indebted to the petitioner [*where petition presented by more than one creditor, add the name of the creditor whose debt is denied*] in the sum stated in the petition [*or that he is indebted to the petitioner in a sum of less amount than fifty pounds*], [*or that he is indebted to C. D., one of the petitioners, in a sum less than the sum stated to be due from him in the petition*], it is ordered that the said *A. B.* shall within \_\_\_\_\_ days enter into a bond in the penal sum of [*double the alleged debt*] with such two sufficient sureties as the Court shall approve of, to pay [*or deposit with the registrar the sum of \_\_\_\_\_ as security for the payment of*] such sum or sums as shall be recovered against the said *A. B.* by *C. D.* the petitioner [*or one of the petitioners*] in any proceeding taken or continued by him against the said *A. B.*, together with such costs as shall be given by the Court in which the proceedings are had.

*Practice,*  
p. 1326.

And it is further ordered, that upon the said *A. B.* entering into the bond aforesaid, all proceedings on this petition shall be stayed until after the Court in which the proceedings shall be taken shall have come to a decision thereon.

Given under the seal of the Court this                      day of                      18                      .  
By the Court,  
Registrar.

No. 19.

*Bond on stay of Proceedings.*

THE BANKRUPTCY ACT, 1869.

Know all men by these presents, that we, *A. B.* of, &c., and *C. D.* of, &c., and *E. F.* of, &c., are jointly and severally held and firmly bound to *L. M.* of, &c., in pounds to be paid to the said *L. M.*, or his certain attorney, executors, administrators, or assigns. For which payment to be made we bind ourselves and each and every of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this                      day of                      one thousand  
eight hundred and                      .

WHEREAS a bankruptcy petition against the said *A. B.* having been presented to the London Court of Bankruptcy [or County Court, &c.], he did appear at the hearing of the said petition and deny that he was indebted to the petitioner [or to one or more of the petitioners], [or allege that he was indebted to the petitioner in the sum of                      pounds only].

[Or Whereas the said *A. B.* having been duly served with a debtor's summons by *L. M.* of \_\_\_\_\_, in accordance with provisions of the Bankruptcy Act, 1869, issued out of the London Bankruptcy Court [or the County Court of \_\_\_\_\_], applied to the said Court to dismiss such summons on the ground that he was not indebted to the said *L. M.* [or that he was not indebted to him to such an amount as would support a petition in bankruptcy].

Now, therefore, the condition of this obligation is such that if the above bounden *A. B.*, or the said *C. D.* or *E. F.*, shall on demand well and truly pay or cause to be paid to *L. M.*, his attorney or agent, such sum or sums as shall be recovered against the said *A. B.* by any proceedings taken or continued within twenty-one days from the date hereof in any competent Court by the said *L. M.* for the payment of the debt claimed by him in the said petition or debtor's sum-

## APPENDIX V.

mons, together with such costs as shall be given to the said *L. M.* by such Court, this obligation shall be void, otherwise shall remain in full force.

*A. B.* (L.S.)  
*C. D.* (L.S.)  
*E. F.* (L.S.)

Signed, sealed, and delivered by the above-bounden  
of , in the presence

NOTE.—If a deposit of money be made the memorandum should follow the terms of the conditions of the bond.

### No. 20.

#### *Notice of Sureties.*

#### THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of ] holden at ]

In the matter of a bankruptcy petition against *A. B.* of , [or In the matter of a debtor's summons by *C. D.* of , against *A. B.* of ]

*Practice,*  
p. 1326.

Take notice that the sureties whom I propose as my security in the above matter [here state the proceedings which have rendered the sureties necessary] are [here state the full names and addresses of the sureties, and their residences for the last six months, therein mentioning the county or city, places, streets, and numbers, if any].

Dated this            day of            187            .            *A. B.*  
To the Registrar of the Court  
and *L. M.* of            .

### No. 21.

#### *Affidavit of Justification.*

#### THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of ] holden at ]

In the matter of a bankruptcy petition against *A. B.* of , [or In the matter of a debtor's summons by *L. M.* against *A. B.* of ]

I, *E. F.*, of            , one of the sureties for            , make oath and say:—

*Practice,*  
p. 1326.

1. That I am a housekeeper [or as the case may be], residing [describing particularly the county or city, the street or place, and the number of the house, if any].

2. That I am worth property to the amount of £            [the amount required] over and above what will pay my just debts, [if security in any other action or for any other purpose, add, and every other sum for which I am now security].

3. That I am not bail or security in any other matter, action, or proceeding, or for any other person [or if security in any other action or actions, add, except for *C. D.*, at the suit of *E. F.*, in the Court of            , in the sum of £            ; for *G. H.*, at the suit of *I. K.*, in the Court of            , in the sum of £            ; specifying the several actions with the Courts in which they are brought and the sums in which he has become bound].

4. That my property, to the amount of the said sum of £            [and if security in any other action, &c., over and above all other sums for which I am now security as aforesaid], consists of [here specify the nature and value of the property in respect of which the deponent proposes to become bondsman as follows, stock in trade, in my business of            , carried on by me at            , of the value of £            , of good book debts owing to me to the amount of £            , of furniture in my house at            , of the value of £            freehold [or

## BANKRUPTCY FORMS.

leasehold] farm of the value of £ , situate at , occupied by  
 , or of a dwelling-house of the value of £ , situate at  
 occupied by , or of other property, particularising each description of  
 property, with the value thereof].

5. That I have for the last six months resided at [describing the place  
 of such residence, or if he has had more than one residence during that period,  
 state it in the same manner as above directed].

Sworn at, &c.

E. F.

No. 22.

### *Transfer of Proceedings.*

#### THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court.

In the matter of a bankruptcy petition against *A. B.* of .  
 Whereas it has been proved to the satisfaction of this Court that a petition for  
 adjudication of bankruptcy against *A. B.* of has been presented to this  
 Court, [or to the County Court of holden at ], and that another  
 petition has been presented against the said *A. B.* to the County Court of  
 holden at : it is ordered that the said petitions [or the said first [or last]  
 mentioned petition] be transferred to the Court [or to the County Court of  
 holden at ].

Given under the seal of the Court this                      day of                      187 .  
By the Court,  
Registrar.

No. 23.

### *Dismissal of Petition.*

#### THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of                      holden                      Sect. 9.  
 at                      ].  
 In the matter of a bankruptcy petition against *A. B.* of .  
 Upon the hearing of this petition this day, the Court being satisfied that the  
 debt [or debts] of the petitioning creditor [or creditors] is [or are] not sufficient  
 to support a petition in bankruptcy [or that the debtor did not commit the act of  
 bankruptcy stated to have been committed], it is ordered that this petition be dis-  
 missed [and that the petitioner do pay to the said *A. B.* the taxed costs thereof].

Given under the seal of the Court this                      day of                      18 .  
By the Court,  
Registrar.

No. 24.

### *Dismissal of Petition upon which Proceedings are stayed where Adjudication made on a subsequent Petition.*

#### THE BANKRUPTCY ACT, 1869.

In the London Court of Bankruptcy [or the County Court of                      holden                      Sect. 9.  
 at                      ].  
 In the matter of a bankruptcy petition against *A. B.* of , presented                      Practice,  
 by *C. D.* of                      ].  
 Whereas *A. B.* has been adjudged a bankrupt upon a petition presented to this  
 Court by *O. P.* of , it is ordered that the bankruptcy petition against the  
 said *A. B.*, presented to this Court by *C. D.* of , the proceedings in which  
 were stayed by order of Court of the                      day of                      187 , be dismissed  
 [add terms if any].

Given under the seal of the Court this                      day of                      187 .  
By the Court,  
Registrar.

## APPENDIX V.

**No. 25.**

### *Adjournment of Petition.*

**THE BANKRUPTCY ACT, 1869.**

**Sect. 8.**  
***Practice,***  
**p. 1325.**

In the London Bankruptcy Court [or the County Court of \_\_\_\_\_] at \_\_\_\_\_, held on \_\_\_\_\_.

In the matter of a bankruptcy petition against A. B. of  
 Upon the hearing of this petition this day, it is ordered that the further hear-  
 ing of this petition be adjourned until the \_\_\_\_\_ day of \_\_\_\_\_ 18, at  
 o'clock in the \_\_\_\_\_ noon.

Given under the seal of the Court this                      day of                      18 .  
By the Court,  
Registrar.

**No. 26.**

### Adjudication.

THE BANKRUPTCY ACT, 1869.

**Sects. 8, 10.**  
*Practice,*  
*p. 1327 et seq.*

In the London Bankruptcy Court [or the County Court of \_\_\_\_\_] at \_\_\_\_\_, held

Upon the hearing of this petition this day, and upon proof, satisfactory to the Court, of the debt of the petitioner (and of the trading), and of the act or acts of the bankruptcy alleged to have been committed by the said *A. B.* having been given, it is ordered that the said *A. B.* be and he is hereby adjudged bankrupt.

Given under the seal of the Court this                      day of                      187 .  
By the Court,  
Registrar.

[To be added for publication in Gazette.]

The first general meeting of the creditors of the said *A. B.* is hereby summoned to be held at this [*or at the office of the*] Court on the \_\_\_\_\_ day of 18\_\_\_\_, at \_\_\_\_\_ o'clock of the \_\_\_\_\_ noon, and that the Court has ordered the bankrupt to attend thereat for examination, and to produce thereat a statement of his affairs as required by the statute.

Until the appointment of a trustee all persons having in their possession any of the effects of the bankrupt must deliver them, and all debts due to the bankrupt must be paid, to the registrar. Creditors must forward their proofs of debts to the registrar.

**No. 27.**

*Notice of First Meeting in Local Paper.*

In the London Bankruptcy Court [or the County Court of \_\_\_\_\_] at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, before me, \_\_\_\_\_, a Justice of the Peace for the County of \_\_\_\_\_, personally appeared \_\_\_\_\_, who being sworn, deposes and says that he is the owner of the above described goods, and that he has no other person claiming an interest therein; and that he has no objection to his name being put to the above certificate.

A. B. of \_\_\_\_\_, was adjudged a bankrupt on the \_\_\_\_\_ day of \_\_\_\_\_ 187 .

The first meeting of creditors will be held at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 187 .

Until the appointment of a trustee, all persons having in their possession any of the effects of the bankrupt must deliver them, and all debts due to the bankrupt must be paid, to the registrar. Creditors must forward their proofs of debts to the registrar.

## BANKRUPTCY FORMS.

**No. 28.**

***Certificate declaring Registrar Trustee.***

**THE BANKRUPTCY ACT, 1869.**

In the London Bankruptcy Court [or the County Court of  
at ]. holden Sect. 18.

In the matter of *A. B.* of \_\_\_\_\_, a bankrupt.

**Rule 43.**

Until such time as the appointment of a trustee by the creditors shall have been certified by this Court, it is hereby certified and declared that the registrar [or *L. M.*, one of the registrars] of this Court is the trustee of the property of the said bankrupt [add where so ordered, and the said registrar is hereby ordered to take possession of the said property forthwith].

Given under the seal of the Court this                      day of                      187 .  
By the Court,  
Registrar.

**No. 29.**

*Order for First Meeting and for the Attendance of the Bankrupt thereat.*

**THE BANKRUPTCY ACT, 1869.**

In the London Bankruptcy Court [or the County Court of  
at ]. holden Sects. 16, 19.

In the matter of *A. B.* of \_\_\_\_\_, a bankrupt.

**Rules 89, 90.**

Whereas the said *A. B.* having been adjudged bankrupt at a Court holden this day, it is ordered that the first meeting of the creditors of the bankrupt shall be held at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, and that the said *A. B.* do personally attend such meeting for the purpose of being examined thereat, and to produce thereat a statement of his affairs as required by the statute.

Given under the seal of the Court this                      day of                      187 .  
By the Court,  
Registrar.

**NOTE.**—This Order is necessary to bring the bankrupt within the provisions of Section 86 should he fail to attend.

No. 30.

***Order of Court for General Meeting of Creditors.***

**THE BANKRUPTCY ACT, 1869.**

In the London Bankruptcy Court [or the County Court of \_\_\_\_\_] at \_\_\_\_\_ holden Sect. 20.

In the matter of *A. B.* of \_\_\_\_\_, a bankrupt.

**Rule 11.**

Whereas upon the application of C. D. of [leave out these words if Practice, p. 1401.]  
Court order meeting without an application, and begin, At a Court holden this  
day, it is ordered that the trustee of the property of the bankrupt do summon a  
meeting of the creditors of the bankrupt to be held at [on the  
day of 187 , at o'clock in the noon [here state the pur-  
pose for which meeting called], and that the registrar [or E. F., one of the  
registrars] of this Court, do preside at such meeting.

Given under the seal of the Court this                      day of                      187 .  
By the Court,  
Registrar.

## APPENDIX V.

**No. 31.**

***Restraining Action, &c., after Bankruptcy.***

THE BANKRUPTCY ACT, 1869.

**Sect. 13.**  
***Practico,***  
**p. 1814.**

In the London Bankruptcy Court [or the County Court of  
at ].

In the matter of a bankruptcy petition against *A. B.* of \_\_\_\_\_  
Upon the application of \_\_\_\_\_ and upon reading his affidavit, it is ordered  
that *L. M.* of \_\_\_\_\_ shall be restrained from taking any further proceedings in  
the action [or suit] brought by him [or upon the judgment [or decree] recovered  
or obtained by him] against the said *A. B.* in [here state the Court in which pro-  
ceedings are] [or it is ordered that the proceedings in the action [or suit] brought  
by him against the said *A. B.* in [here state the Court in which proceedings are]  
may be proceeded with on [here insert the terms fixed by the Court]].

Given under the seal of the Court this                      day of                      18                      .  
By the Court,  
Registrar.

**No. 32.**

***Affidavit for proof of Debt with or without Security.***

*Practice,*  
*p. 1344 et seq.*

In the London Court of Bankruptcy [or the County Court of  
at ]. holds

In the matter of *A. B.* of \_\_\_\_\_, a bankrupt.  
I, \_\_\_\_\_, of \_\_\_\_\_, make oath and say:—

1. That the said *A. B.* was at the date of the order of adjudication and still is justly and truly indebted to me in the sum of \_\_\_\_\_ for (state consideration), for which said sum or any part thereof I say that I have not nor hath any person by my order or to my knowledge or belief for my use had or received any manner of satisfaction or security whatsoever, save and except the following :—

[Here set out the particulars of the security, and the value at which the creditor has assessed the same, or if bills be held specify them in the schedule.]

Date.	Drawn.	Acceptor.	Amount.	Date when due.

Sworn at  
I appoint C. D., of, &c., my proxy in the above matter.

*E. F.* [or *G. H.* of \_\_\_\_\_, in partnership name].

[When affidavit is made by a clerk alter the form accordingly and add the following. That I am a person in the employ of C. D., and that I am duly authorized by him to make this affidavit, and that it is within my own knowledge that the aforesaid debt was incurred, and for the consideration above stated, and that such debt to the best of my knowledge and belief still remains unpaid and unsatisfied.]



No. 33.

**No. 33.**

**THE BANKRUPTCY ACT, 1869.**

Signed by the said *M. N.* in the presence  
of *X. Y.* of \_\_\_\_\_.

No. 34.

THE BANKRUPTCY ACT, 1869.

No. 35.

THE BANKRUPTCY ACT, 1869.

[Where security is required, add as follows: That the trustee do give security

## APPENDIX V.

by bond to \_\_\_\_\_ in the amount of \_\_\_\_\_ pounds himself, and two sufficient sureties [or that *F. M.* and *K. L.* be his sureties], [or by depositing the sum of \_\_\_\_\_ pounds with the registrar] [or by giving the security of (here insert the guarantee association or company resolved on) in the sum of \_\_\_\_\_ pounds.]]

(Here add any other resolutions that may be come to as to the manner of the administration of the property by the trustee, the transfer of the proceedings to another Court, the appointment of a bank, &c.)

*F. K.*, Chairman.

[Here follow creditors' signatures.]

Creditors' signature.	Amount of Debt.

### No. 36.

*List of Creditors assembled to be used at every Meeting.*

#### THE BANKRUPTCY ACT, 1869.

*Practice,*  
p. 1342.

In the London Court of Bankruptcy [or the County Court of \_\_\_\_\_] holden  
at \_\_\_\_\_  
In the matter of \_\_\_\_\_  
Meeting held at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ 187 .

No. of Assents of Creditors.	Number.	Names of Creditors present or assembled.	Amount of Assent.	Amount of Proof.
1	1			
	2			
1	3			
1	4			
1	5			
1	6			
	7			
	7	Total number of creditors present or assembled.		
5	Total number of assents.			
		Totals . . . £		

# BANKRUPTCY FORMS.

No. 37.

## *Certificate of Judge for Transfer of Proceedings.*

In the London Bankruptcy Court [or the County Court of                      holden      Sect. 80,  
at                      ].                      par. 8.  
In the matter of *A. B.* of                      , a bankrupt.                      *Practice,*  
I hereby certify for the following reasons that proceedings in this bankruptcy                      p. 1278.  
would in my opinion be more advantageously conducted in the London Bank-  
ruptcy Court [or the County Court of                      holden at                      ]. (*Here set*  
*out reasons.*)  
Dated this                      day of                      187                      .  
F. H., Judge.

No. 38.

## *Report and Certificate of Appointment of Trustee.*

### THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of                      holden      Sect. 14.  
at                      ].                      Rule 68.  
In the matter of *A. B.* of                      , a bankrupt.                      *Practice,*  
It is reported to the Court as follows:—                      p. 1863.  
1. That the first meeting of creditors in this bankruptcy was held at  
on the                      day of                      at                      o'clock in the                      noon, as ordered  
by this Court.  
2. That by resolution at such meeting *G. H.* of                      was appointed to fill  
the office of trustee of the property of the bankrupt.  
3. That by another resolution it was declared that the said *G. H.* should give  
security for the due performance of the said office, by entering into a bond in the  
sum of                      with two sufficient sureties [*or as the case may be*].  
X. Y., Registrar,  
or  
F. K., Chairman.

# APPENDIX V.

No. 39.

*Bankrupt's Statement of Affairs for First Meeting.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of holland  
at ].

In the matter of *A. B.* of .

Statement of the affairs of the above *A. B.* on the [here insert date of institution of proceedings].

	£	s.	d.		£	s.	d.
Unsecured creditors as per list (A.) . . . .				Stock in trade at [state name of place] estimated at . . . .			
	£	s.	d.	Book debts about £ . . . .			
Creditors fully secured, as per list (B.) . . . .				estimated to produce . . . .			
Less estimated value of securities . . . .				Cash in hand . . . .			
Surplus to contra £ . . . .				Bills of exchange or other similar securities, estimated to produce . . . .			
	£	s.	d.	Furniture, fixtures, and fittings, at estimated to produce . . . .			
Creditors partly secured, as per list (C.) . . . .				Property, as per list (G.) . . . .			
Estimated value of securities . . . .				Surplus from securities in the hands of creditors fully secured, see contra . . . .			
Other liabilities, as per list (D.) . . . .							
Creditors for rent, rates, taxes, and wages, as per list (E.) . . . .							
Liabilities on bills discounted, as per list (F.) £ . . . .							
Of which it is expected will rank against the estate for dividend . . . .							
Total debts . £ . . . .				Total assets . £ . . . .			

*A. B.*

A.

## LIST OF CREDITORS.

Name.	Address.	Amount of Debt.		
		£	s.	d.

## BANKRUPTCY FORMS.

**B.**

### LIST OF CREDITORS FULLY SECURED.

Name of Creditor.	Address.	Estimated value of Security,			Amount of Debt.		
		£	s.	d.	£	s.	d.
A. B. . . . .	Bristol . . . . .						
[Here state particulars of securities and add] Estimated to produce . . . . .							
C. D. . . . .	Glasgow . . . . .						
[Here state particulars as above.] Estimated to produce . . . . .							
Total estimated value of securities . . . . .		£					
Total amount of debts of creditors holding security . . . . .							

**C.**

### CREDITORS PARTLY SECURED.

Names of Creditors.	Addresses.	Estimated Value of Security.			Amount of Debt. •		
[Follow instructions as to list of creditors fully secured.]		£	s.	d.	£	s.	d.
Total estimated value of securities . . . £							
Total amount of debts of creditors partly secured . . . . . £							
Surplus . . . . . £							

## APPENDIX V.

### D.

#### LIABILITIES.

<div style="text-align: center;">_____</div> <i>[The names and addresses of creditors and the full particulars of all liabilities not otherwise scheduled to be here given.]</i>	Amount of Creditors' Claim.		
	£	s.	d.
Total amount of liabilities . . . £			

### E.

#### CREDITORS FOR RENT, RATES, TAXES, AND WAGES.

Creditor's Name.	Address.	Nature of Claim.	Amount of Debt.		
		<i>[State whether for "Rent," "Rates," "Taxes," or "Wages."]</i>	£	s.	d.
Total . . . £					

### F.

#### LIABILITY ON BILLS DISCOUNTED BY BANKRUPT.

Acceptor's Name and Address.	Due Date.	Amount.	Holder's Name and Address (if known).		
		£   s.   d.			

## BANKRUPTCY FORMS.

**G.**

**PROPERTY.**

Full Statement of Nature of Property.	Estimated Produce.		
	£	s.	d.
Total . . £			

NOTE.—The full particulars of every description of property, as defined by Section 4 of the Bankruptcy Act, 1869, not otherwise scheduled in the statement of affairs, are to be set forth in this list.

**No. 40.**

***Bond of Trustee.***

Know all men by these presents, that we, *G. H. of, &c., and C. D. of, &c., and E. F. of, &c.*, are jointly and severally held and firmly bound to *James Bacon*, the Chief Judge in Bankruptcy, in £  to be paid to the said *James Bacon*, or his certain attorney, executors, administrators, or assigns. For which payment to be made we bind ourselves and each every of us, in the whole, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this                      day of                      one thousand  
eight hundred and                      .

WHEREAS on the                      day of                      18                      , *A. B.* of                      , was adjudged bankrupt; and whereas at the first meeting of creditors under the said bankruptcy the said *G. H.* was appointed trustee of the property of the bankrupt; and whereas it was resolved that the said trustee should give security by bond to *[here state to whom]* in the sum of                      , with two sufficient sureties thereto.

Now, therefore, the condition of this bond or obligation is such that if the said *G. H.* shall and do from time to time well and sufficiently perform and execute all and singular the duties required of him as trustee by the Bankruptcy Act, 1869, or any Rule of Court made or hereafter to be made under such Act, this obligation shall be void or otherwise shall remain in full force and virtue.

Signed, sealed, and delivered by } *G. H.* { L. S.  
the above bounden } *C. D.* { L. S.  
in the presence of . } *E. F.* { L. S.

NOTE.—If a deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond.

**No. 41.**

***Certificate of Appointment of Trustee.***

THE BANKRUPTCY ACT, 1869.

In the London Court of Bankruptcy [or the County Court of  
at ]. holden *Practice,*  
p. 1868.

This is to certify that *G. H.* of \_\_\_\_\_, has been duly appointed trustee of the property of *A. B.* of \_\_\_\_\_, adjudicated bankrupt on the \_\_\_\_\_ day of \_\_\_\_\_.

Given under the seal of the Court this                      day of                      187 .  
Registrar.

## APPENDIX V.

### No. 42.

#### *Notice in Gazette of the Appointment of Trustee and of day for Public Examination of Bankrupt.*

Rule 70. In the London Bankruptcy Court [or the County Court of                      holden  
Practice, at                      ].  
p. 1349 of seq. In the matter of *A. B.* of                      , a bankrupt.  
*G. H.* of                      , has been appointed trustee of the property of the bankrupt.  
The Court has appointed the public examination of the bankrupt to take place  
at                      on the                      day of                      at                      o'clock in the                      noon.  
All persons having in their possession any of the effects of the bankrupt must  
deliver them to the trustee, and all debts due to the bankrupt must be paid to the  
trustee.  
Creditors who have not yet proved their debts must forward their proofs of  
debts to the trustee.  
Dated this                      day of                      , 187                      .

Registrar.

### No. 43.

#### *Admission of Debt by Debtor of Bankrupt.*

THE BANKRUPTCY ACT, 1869.

Sect. 96. In the London Bankruptcy Court [or the County Court of                      holden  
Practice, at                      ].  
p. 1376. In the matter of *A. B.* of                      , a bankrupt.  
I, the undersigned *J. K.* of                      , do hereby admit that I am indebted to  
the said bankrupt in the sum of                      pounds, upon the balance of accounts  
between myself and the said bankrupt.  
Witness,                      *J. K.*  
*C. D.*, Registrar.

### No. 44.

#### *Order to Pay admitted Debt.*

THE BANKRUPTCY ACT, 1869.

Sect. 96. In the London Bankruptcy Court [or the County Court of                      holden  
Practice, at                      ].  
p. 1376. In the matter of *A. B.* of                      , a bankrupt.  
WHEREAS *J. K.* of                      , in his examination taken this day, and signed  
and subscribed by him, has admitted that he is indebted to the said bankrupt in  
the sum of                      pounds, on the balance of accounts between him and the  
bankrupt; it is ordered that the said *J. K.* do pay to the trustee of the property  
of the bankrupt, in full discharge of the sum so admitted, the sum of  
pounds forthwith [or if otherwise, state the time and manner of payment], and do  
further pay to the said trustee the sum of                      pounds for costs.  
Given under the seal of the Court this                      day of                      187                      .  
By the Court,  
Registrar.



## No. 45.

*Memorandum of Public Examination of Bankrupt.*

In the London Bankruptcy Court [or the County Court of  
at ]. holden *Practice*,  
*p. 1338.*

sheets of paper, the first sheet whereof is marked with the letter A, is true, and that the said statement of accounts do contain and is a full and true disclosure and discovery of all my estate and effects both real and personal whatsoever and wheresoever. And I further say, that at the time of this my examination, I have delivered up to the trustee of my property, all such parts of my goods, wares, merchandizes, money, estate and effects, and all books, papers, and writings relating thereto, as are now in my custody, possession, or power. And I further say that I have not removed, concealed, embezzled, or destroyed any part of my estate, real or personal, nor any books of accounts, papers, or writings relating thereto, with an intent to defraud my creditors.

***A. B.***

***Notice of Meeting to be held on Resignation of Trustee.***

In the London Bankruptcy Court [or the County Court of  
at ]. holden Sect. 88.  
Practice.

For the Committee,

**To X. Y.**

One of the said Committee.

*Minutes at Meeting for receiving Resignation of Trustee, &c.*

In the London Bankruptcy Court [or the County Court of  
at ].

We the undersigned (here should follow similar resolutions to those appointing the late trustee, &c., at the first meeting).

E. F., chairman of this meeting.

## APPENDIX V.

No. 48.

### *Report and Certificate of Appointment of Trustee to fill a Vacancy caused by a Resignation.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
p. 1863.

In the London Bankruptcy Court [or the County Court of                      holden  
at                      ].

In the matter of *A. B.* of                      , a bankrupt.

It is reported to the Court as follows:—

1. That a meeting of creditors in this bankruptcy was held at                      on the  
day of                      at                      o'clock in the                      noon, for the purpose of  
receiving of *G. H.* his resignation of the office of trustee and of appointing a  
person to fill such office [or for the purpose of appointing a trustee, who is dead,  
or who has been adjudged bankrupt].

2. That the said *G. H.* resigned the office of trustee and by resolution at such  
meeting *N. O.* of                      , was appointed to fill the office of trustee of the pro-  
perty of the bankrupt.

3. That by another resolution it was declared that the said *N. O.* should give  
security for the due performance of the said office, by entering into a bond in  
the sum of                      with two sufficient securities [or as the case may be].

*F. K.*, Chairman.

No. 49.

### *Notice in Gazette of Intended Dividend.*

*Practice,*  
p. 1895.

In the London Bankruptcy Court [or the County Court of                      holden  
at                      ].

A dividend is intended to be declared in the matter of *A. B.* of                      ,  
adjudicated a bankrupt on the                      day of                      187 .

Creditors who have not proved their debts by the                      day of  
187 , will be excluded.

Dated this                      day of                      , 187 .

*G. H.*, Trustee.

No. 50.

### *Application by Creditor for Order for Trustee to Pay Dividend and Order thereon.*

THE BANKRUPTCY ACT, 1869.

Sect. 46.

In the London Bankruptcy Court [or the County Court of                      holden  
at                      ].

Rule 135.

In the matter of *A. B.* of                      , a bankrupt.

*Practice,*  
p. 1397.

I, *F. K.* of                      , make application to this Court for an order to be made  
upon the trustee to pay the dividend in this bankruptcy due to me, with interest  
thereon for the time it has been withheld from me, that is to say from the  
day of                      187 , on which day I applied to the trustee for its payment to  
me, and also to pay to me the costs of this application.

Dated this                      day of                      187 .

*F. K.*

Upon the reading of this application, and upon hearing the trustee [and the  
creditor, where he has been required to attend and has attended], it is ordered  
that the trustee do forthwith pay to the said *F. K.* the sum of                      pounds,  
the amount of such dividend.

And it is further ordered that the trustee do pay to the said creditor at the same  
time the sum of                      , for interest on such dividend, being at the rate of £5

## BANKRUPTCY FORMS.

per cent. for the time that its payment has been withheld, together with a further sum of                      for the costs of this application.

Given under the seal of the Court this                      day of                      187 .  
By the Court,  
Registrar.

[If the Court does not order payment, then after the words "it is ordered"  
insert the order made.]

No. 51.

### *Report of Trustee for Closing Bankruptcy.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of                      holden                      Sect. 47.  
at                      ].  
Practice,  
p. 1412.

In the matter of *A. B.* of                      , a bankrupt.

I, *G. H.*, the trustee of the property of the bankrupt, do hereby report to this Court, as follows:—

That the whole of the property of the bankrupt has been realized for the benefit of his creditors, [and a dividend to the amount of                      shillings in the pound has been paid as shown by the statement hereunto annexed]:

[or, That so much of the property of the bankrupt as can, according to the joint opinion of myself and the committee of inspection, hereunto annexed in writing under our hands, be realized without needlessly protracting the bankruptcy, has been realized, as shown by the statement hereunto annexed, and a dividend to the amount of                      shillings has been paid];

[or, That a composition [or arrangement] offered by the bankrupt was duly                      Sect. 28.  
accepted by me [or that a general scheme of settlement or arrangement of the affairs of the bankrupt has been assented to by me] to which the approval of this Court was given on the                      day of                      187 .]

Dated this                      day of                      187 .

*G. H.*, Trustee.

No. 52.

### *Order on Report of Trustee as to the Closing of a Bankruptcy.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of                      holden                      Sect. 47.  
at                      ].  
Practice,  
p. 1412.

In the matter of *A. B.* of                      , a bankrupt.

Upon reading a report of the trustee of the property of the bankrupt, dated the                      day of                      187 , reporting (*here set out the terms of the report*) [and upon hearing (*here insert the name of any person who may appear to oppose an order for closing*)], the Court being satisfied that (*here follow the terms of the report*), doth order and declare that the bankruptcy of the said *A. B.* has closed, [*or as the Court may otherwise order*].

Given under the seal of the Court this                      day of                      187 .

By the Court,  
Registrar.

## APPENDIX V.

No. 53.

### *Application for Directions by Trustee.*

THE BANKRUPTCY ACT, 1869.

Sect. 20. In the London Bankruptcy Court [or the County Court of                      holden  
at                      ].  
Rule 112. In the matter of *A. B.* of                      , a bankrupt.  
*Practice,* I desire to make application to the Court for its directions [*here state the*  
p. 1381. *particular matter in relation to which they are sought*].  
  
Let this application be heard on the                      day of                      at                      o'clock  
in the                      noon [and let the trustee give notice to (*here insert the persons to*  
*whom it is given*)].  
Dated this                      day of                      187                      .  

Registrar.

No. 54.

### *Order on Application of Trustee for Directions.*

THE BANKRUPTCY ACT, 1869.

Sect. 20. In the London Bankruptcy Court [or the County Court of                      holden  
at                      ].  
Rule 112. In the matter of *A. B.* of                      , a bankrupt.  
*Practice,* Whereas at a Court held this day the trustee of the property of the bankrupt  
p. 1381. applied to this Court for its directions [*here state the particular matter in relation*  
*to which they are sought*]. Now upon hearing of *C. D.* of                      , on the  
matter, it is ordered                      [*here set out the order*], and that the trustee do pay  
out of his own moneys [or out of the property of the bankrupt] the sum of  
the costs of this order, and the sum of                      to *C. D.* for his costs [or that *C. D.*  
do pay the sum of                      the costs of this order, and also the sum of                      to  
*C. D.* for his costs].  
Given under the seal of the Court this                      day of                      187                      .  

By the Court,  
Registrar.

No. 55.

### *Notice in Gazette of Meeting to authorize the Trustee to accept a Composition.*

Sect. 28. In the London Bankruptcy Court [or the County Court of                      holden  
*Practice,* at                      ].  
p. 1400. A meeting of the creditors of *A. B.* of                      , adjudicated a bankrupt on  
the                      day of                      187                      , will be held at                      on the                      day  
of                      187                      , at                      o'clock in the                      noon, for the purpose of  
considering the propriety of sanctioning the acceptance by the trustee of a compo-  
sition offered by the bankrupt of                      [or the assent by the trustee to a scheme  
of settlement of the affairs of the bankrupt], [and for the annulling thereafter  
of the order of adjudication made against the bankrupt].  

*G. H.*, Trustee.

No. 56.

### *Order to Stay Proceedings on a Composition, &c.*

THE BANKRUPTCY ACT, 1869.

Sect. 80, In the London Bankruptcy Court [or the County Court of                      holden  
par. 10. at                      ].  
In the matter of *A. B.* of                      , a bankrupt.  
Upon the application of *H. D.* of                      , it having been proved to the satis-

## BANKRUPTCY FORMS.

faction of the Court that the proceedings in this bankruptcy ought to be stayed, by reason that negotiations are pending for the liquidation of the affairs of the bankrupt by arrangement, [or for the acceptance of a composition by the creditors in satisfaction of the debts due to them from the debtor] [or, state any other reason that may have been proved to exist for the order]: it is ordered that the proceedings in this bankruptcy be stayed until further order. Sects. 125; 126.

Given under the seal of the Court this                      day of                      187 .  
By the Court,  
Registrar.

No. 57.

*Application to Annul Adjudication under Section 28.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of                      holden                      Sect. 28.  
at                      ].  
In the matter of *A. B.* of                      , a bankrupt.                      *Practice,*  
I, *R. S.* of                      , being interested in this matter, do hereby make applica-                      p. 1400.  
tion to the Court that the order of adjudication against the said bankrupt be  
annulled in accordance with the terms of a composition, the acceptance of which  
by the trustee of the property of the bankrupt was sanctioned by special resolution  
at a meeting of creditors held on the                      day of                      , at                      .  
Dated this                      day of                      .  
R. S.

No. 58.

*Order Annulling Adjudication under Section 28.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of                      holden                      Sect. 28.  
at                      ].  
In the matter of *A. B.* of                      , a bankrupt.                      *Practice,*  
Whereas at a meeting of creditors held under this bankruptcy on the                      p. 1400.  
day of                      , pursuant to notice given in the *Gazette*, it was resolved by a  
majority in number and three-fourths in value of the creditors then present or  
duly represented at the said meeting, that a composition offered by the bankrupt  
for payment of the debts owing by him was calculated to benefit the general body  
of the creditors under the estate, and should be accepted by the trustee of the prop-  
erty of the bankrupt.  
And whereas the Court approving of the composition offered did testify such  
approval by the Judge of this Court signing the instrument containing the terms  
of the composition.  
And whereas it was made a condition of the composition that the order of  
adjudication should be annulled; and whereas                      hath applied to this Court  
to annul the adjudication accordingly.  
It is hereby ordered that the adjudication made against the said bankrupt be  
and the same is hereby annulled. [*Add any directions as to vesting the property*  
*of the bankrupt.*]

Given under the seal of the Court this                      day of                      187 .  
By the Court,  
Registrar.

## APPENDIX V.

No. 59.

*Notice in Gazette and Paper, of Bankruptcy having been annulled.*

THE BANKRUPTCY ACT, 1869.

Sect. 81.  
*Practice,*  
p. 1416.

In the London Bankruptcy Court [or the County Court of                      holden  
at                      ].  
In the matter of *A. B.* of                      , a bankrupt.  
Whereas under a bankruptcy petition presented to this Court against the said  
*A. B.*, an order of adjudication was made on the                      day of                      187 .  
This is to give notice that the said adjudication was by order of this Court  
annulled on the                      day of                      187 .  
Dated this                      day of                      187 .

Registrar.

No. 60.

*Application for Release by Trustee and Order thereon.*

THE BANKRUPTCY ACT, 1869.

Sect. 51.  
*Practice,*  
p. 1389.

In the London Bankruptcy Court [or the County Court of                      holden  
at                      ].  
In the matter of *A. B.* of                      , a bankrupt.  
I, the trustee of the property of the said bankrupt, do make application to this  
Court for my release as such trustee.  
Dated this                      day of                      187 .

*G. H.*

On the hearing of the above application it is ordered by the Court that the  
release of the said *G. H.* be granted, and it is hereby granted accordingly, and  
the said *G. H.* is hereby removed from the office of trustee of the property of the  
bankrupt.

Given under the seal of the Court this                      day of                      187 .  
By the Court,  
Registrar.

No. 61.

*Notice in Gazette of Day a Bankrupt will Apply for his Discharge.*

*Practice,*  
p. 1405.

In the London Bankruptcy Court [or the County Court of                      holden  
at                      ].  
On the                      day of                      187 , at                      o'clock in the                      noon,  
*A. B.* of                      , adjudicated bankrupt on the                      day of                      187 ,  
will apply for an order of discharge.  
Dated this                      day of                      187 .

Registrar.

No. 62.

*Application for Order of Discharge where a Dividend of not less than 10s.  
has been paid.*

THE BANKRUPTCY ACT, 1869.

Sect. 48.  
*Practice,*  
p. 1405.

In the London Bankruptcy Court [or the County Court of                      holden  
at                      ].  
In the matter of *A. B.* of                      , a bankrupt.  
The bankruptcy of *A. B.* having been closed, as shown by the order published

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in the *London Gazette* on the                      day of                      187    , and a dividend of  
[here state the amount of the dividend, which must be not less than 10s.] shillings  
in the pound having been paid out of his property to all the creditors who have  
proved, the said bankrupt doth hereby apply to the Court for an order of discharge.

Dated this            day of            187 .

Let this application be heard on the \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_, at \_\_\_\_\_  
o'clock in the \_\_\_\_\_ noon.  
Dated this \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_.

**Registrar.**

No. 63.

*Application for Order of Discharge where the Failure to pay a Dividend of 10s.  
arose through Negligence or Fraud of Trustee.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of  
at ].

In the matter of *A. B.* of \_\_\_\_\_, a bankrupt.

The bankruptcy of *A. B.* having been closed, as shown by the order published in the *London Gazette* on the \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_, and the failure to pay a dividend of 10s. in the pound out of his property, having been caused through the negligence [or fraud] of the trustee, as proved by the proceedings which have been had in this Court for the removal of such trustee [or as the case may have been], the said bankrupt doth hereby apply to the Court for an order of discharge.

Dated this            day of            187 .

Let this application be heard on the \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_, at \_\_\_\_\_  
o'clock in the \_\_\_\_\_ noon.  
Dated this \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_.

**Registrar.**

**No. 64.**

*Application for Order of Discharge on a Special Resolution that the Bankruptcy or the Failure to Pay a Dividend of 10s. arose from circumstances for which the Bankrupt should not be held responsible.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of  
at ].

In the matter of *A. B.* of \_\_\_\_\_, a bankrupt.

The bankruptcy of *A. B.* having been closed, as shown by the order published in the *London Gazette* on the                      day of                      187                      , and the creditors of the said bankrupt having, at a meeting held at                      , on the                      day of                      187                      , passed a special resolution, as shown by the minutes of the proceedings had at such meeting, duly signed by the chairman thereof, to the effect that, in their opinion, his bankruptcy has arisen from circumstances for which the said bankrupt cannot justly be held responsible [or that his failure to pay a dividend of 10s. in the pound, in their opinion, has arisen from circumstances for which the said bankrupt cannot justly be held responsible,] and that they desire that an order of discharge should be granted to the bankrupt, the said bankrupt doth hereby apply to the Court for an order of discharge.

Dated this                      day of                      187 .

Let this application be heard on the \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_, at \_\_\_\_\_  
o'clock in the \_\_\_\_\_ noon.  
Dated this \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_.

Registrar.  
p 2

## APPENDIX V.

No. 65.

### *Application for an Order of Discharge during Continuance of Bankruptcy.*

THE BANKRUPTCY ACT, 1869.

Sect. 48.  
Practice,  
p. 1405.

In the London Bankruptcy Court [or the County Court of                      holden  
at                      ].

In the matter of *A. B.* of                      , a bankrupt.

The creditors of the said bankrupt having, at a meeting held at                      , on  
the                      day of                      187                      , passed a special resolution, as shown by the  
minutes of the proceedings had at such meeting, duly signed by the chairman  
thereof, assenting to the bankrupt applying to this Court for an order of dis-  
charge, although the bankruptcy has not been closed.

[*Show here, as in previous forms, whether a dividend of 10s. has been paid, or  
could have been but for the negligence or fraud of the trustee, or that by  
special resolution the bankruptcy or the failure to pay a dividend of 10s.  
has arisen from circumstances for which the bankrupt should not be held  
responsible.*]

The said bankrupt doth hereby apply to the Court for an order of discharge.

Dated this                      day of                      187                      .

Let this application be heard on the                      day of                      187                      , at                      *A. B.*  
o'clock in the                      noon.

Dated this                      day of                      187                      .

Registrar.

No. 66.

### *Memorandum of Application for Order of Discharge.*

THE BANKRUPTCY ACT, 1869.

Practice,  
p. 1405.

In the London Bankruptcy Court [or the County Court of                      holden  
at                      ].

In the matter of *A. B.* of                      , a bankrupt.

The application of the said bankrupt for his order of discharge having been  
read, and the Court being satisfied that the bankrupt is entitled to such order,  
doth hereby grant it. [*If suspended or withheld, alter the form accordingly, and  
state reasons for suspending or withholding.*]

No. 67.

### *Order of Discharge.*

THE BANKRUPTCY ACT, 1869.

Sect. 48.  
Practice,  
p. 1405.

In the London Bankruptcy Court [or the County Court of                      holden  
at                      ].

In the matter of *A. B.* of                      , a bankrupt.

Whereas at a Court held this                      day of                      187                      , the bankrupt  
applied for an order of discharge; \*and whereas it having been proved to the  
Court that a dividend of ten shillings in the pound has been paid [or might have  
been paid except through the negligence [or fraud] of the trustee of the property  
of the bankrupt], or [that a special resolution of the creditors of the bankrupt  
has been passed to the effect that his bankruptcy [or the failure to pay a dividend  
of ten shillings in the pound] has, in their opinion, arisen from circumstances for  
which the bankrupt cannot justly be held responsible, and that they desire that an  
order of discharge should be granted to the bankrupt], an order of discharge is  
hereby granted.

[Or \* And whereas the Court, having had made to it a representation of the



## BANKRUPTCY FORMS.

creditors of the bankrupt, made by special resolution of the creditors passed at a meeting of them held at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_, duly signed by the chairman thereof, that the bankrupt has made default in giving up to his creditors the property which he is required by the Bankruptcy Act, 1869, to give up [or that a prosecution has been commenced against the bankrupt in pursuance of the provisions relating to the punishment of fraudulent debtors contained in the Debtors Act, 1869, in respect of an offence alleged to have been committed by the bankrupt against the said Act]: and whereas the Court, being satisfied of the truth of the representation of the creditors made by the said special resolution, it is ordered that the discharge of the bankrupt be withheld altogether [or suspended until \_\_\_\_\_ from the date of this order]].

Given under the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_.  
By the Court,  
Registrar.

No. 68.

*Notice to Creditors of a Bankrupt, who has paid an additional sum after close of his Bankruptcy, making up a dividend of 10s. in the pound, that he will apply for an Order of Discharge.*

### THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of \_\_\_\_\_] holden Sect. 54.  
at \_\_\_\_\_].  
In the matter of *A. B.* of \_\_\_\_\_, a bankrupt. Rules 125  
To the creditors of the said bankrupt. to 128.  
Take notice that the bankrupt will apply to this Court on the \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, for an order of discharge Practice, p. 1409.  
on the ground that he has paid to his several creditors since the close of the bankruptcy a sum, which with the dividend of \_\_\_\_\_ paid, makes up ten shillings in the pound on all the debts proved in his bankruptcy.  
Dated this \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_.

Registrar.

No. 69.

### *Notice in Gazette of Order of Discharge.*

In the London Bankruptcy Court [or the County Court of \_\_\_\_\_] holden Sect. 48.  
at \_\_\_\_\_].  
In the matter of *A. B.* of \_\_\_\_\_, a bankrupt. Rule 95.  
An order of discharge was granted to *A. B.* of \_\_\_\_\_, who was adjudicated bankrupt on the \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_. Practice, p. 1406.

Registrar.

No. 70.

*Notice in Gazette that a Creditor seeks to enforce Payment of his Debt out of the Property of an undischarged Bankrupt.*

In the London Bankruptcy Court [or the County Court of \_\_\_\_\_] holden Sect. 54,  
at \_\_\_\_\_]. par. 2.  
Notice—The sanction of this Court is sought for the enforcement against *A. B.*, adjudicated bankrupt on the \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_, of the payment of the balance remaining unpaid of a debt proved under his bankruptcy. Rules 135 to 137.  
The bankruptcy was closed on the \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_. All persons Practice, p. 1409.  
who have become creditors of this bankrupt since such day, and who may desire to show cause against the granting of the sanction sought, should attend at this Court on the \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon.  
Registrar.

## APPENDIX V.

No. 71.

### *Search Warrant.*

#### THE BANKRUPTCY ACT, 1869.

Sects. 76,  
79.

Rule 176.  
*Practice*,  
p. 1332.

In the London Bankruptcy Court [or the County Court of                      holders  
at                      ].

In the matter of *A. B.* of                      , a bankrupt.

Whereas by evidence duly taken upon oath it hath been made to appear to the Court that there is reason to suspect and believe that property of the said bankrupt is concealed in the house [or other place, describing it, as the case may be] of one *X. M.* of                      , in the county of                      , such house [or place] not belonging to the said bankrupt.

These are therefore to require you to enter in the daytime into the house [or other place, describing it] of the said *X. M.*, situate at                      aforesaid, and then diligently to search for the said property, and if any property of the said bankrupt shall be there found by you on such search, that you seize the same, to be disposed of and dealt with according to the provisions of the said Act.

Given under the seal of the Court this                      day of                      187 .

Registrar.

To the *X. Y.* officer of this Court  
and his assistants [or high bailiff  
and others the bailiffs of this  
Court].

No. 72.

### *Warrant of Seizure.*

#### THE BANKRUPTCY ACT, 1869.

Sect. 96.

Rule 166.  
*Practice*,  
p. 1332.

In the London Bankruptcy Court [or the County Court of                      holders  
at                      ].

In the matter of *A. B.* of                      , a bankrupt.

Whereas on the                      day of                      187 , an order of adjudication was made against the said bankrupt:—These are therefore to require you forthwith to enter into and upon the house and houses, and other the premises of the said bankrupt, and also in all other place and places belonging to the said bankrupt where any of his goods and monies are or are reputed to be: and there seize all the ready money, jewels, plate, household stuff, goods, merchandise, books of accounts, and all other things whatsoever, belonging to the said bankrupt except his necessary wearing apparel, bedding and tools, as excepted by the said statute in that behalf.

And that which you shall so seize you shall safely detain and keep in your possession until you shall receive other orders in writing for the disposal thereof from the trustee; and in case of resistance or of not having the key or keys of any door or lock of any premises belonging to the said bankrupt where any of his goods are or are suspected to be, you shall break open, or cause the same to be broken open for the better execution of this warrant.

Given under the seal of the Court this                      day of                      187 .

Registrar.

To the *X. Y.* officer of this Court,  
and to his assistants [or to the  
high bailiff and others the bailiffs  
of this Court].

## No. 73.

THE BANKRUPTCY ACT, 1869.

In the matter of a bankruptcy petition against *A. B.* of \_\_\_\_\_, [or in the matter of *A. B.* of \_\_\_\_\_, a bankrupt]. Rule 177.  
*Practice.*

Whereas, by evidence taken upon oath, it hath been made to appear to the satisfaction of the Court, that there is probable reason to suspect and believe that the said A. B. is about to go abroad [or quit his place of residence] with a view of avoiding service of this petition [or of avoiding appearing to this petition], [or of avoiding examination in respect of his affairs, or otherwise delaying or embarrassing the proceedings in bankruptcy].

[Or whereas by evidence taken upon oath it hath been made to appear to the satisfaction of this Court that the said *A. B.* has removed certain of his goods and chattels in his possession, above the value of five pounds, without the leave of the trustees, that is to say [*here describe the goods or chattels*]].

These are therefore to require you, the said [or high bailiff, bailiffs], and others, to take the said *A. B.* and to deliver him to the governor or keeper of the above-named prison, and you the said governor or keeper to receive the said *A. B.*, and him safely to keep in the said prison until such time as this Court may order.

Given under the seal of the Court this                      day of                      187 .  
By the Court,  
Registrar.

**No. 74.**

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, To [name of witness] Greeting: We command you that all things set aside, and ceasing every excuse, you be and appear in your proper person before the Chief Judge of the London Bankruptcy Court at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ by \_\_\_\_\_ of the clock in the \_\_\_\_\_ noon of the same day:—[add where production of documents required, and also that you bring with you and produce at the time and place aforesaid (here describe shortly the deeds, papers, letters, &c., you require to be produced)] to testify the truth according to your knowledge in the matter of a certain Bankruptcy Petition [or Debtor's Summons, or other matter] now in our London Bankruptcy Court aforesaid presented by C. D. against A. B. [or granted at the instance of C. D. against A. B., or as the case may be] on the part of the said C. D. [or A. B.], and at the aforesaid day in the said matter; and hereof fail not at your peril.

Given under the seal of our London Bankruptcy Court the                      day of  
187 .

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## APPENDIX V.

No. 75.

*Subpoena or Summons to Witness in County Court.*

THE BANKRUPTCY ACT, 1869.

Sect. 66. In the County Court of \_\_\_\_\_, holden at \_\_\_\_\_  
In the matter of a bankruptcy petition against *A. B.* of \_\_\_\_\_, [or in the  
matter of *A. B.* of \_\_\_\_\_, a bankrupt].

Rule 166. To *X. Y.* of \_\_\_\_\_  
*Practice,*  
p. 1323 et seq. You are hereby required to attend at the Court House in \_\_\_\_\_ on the  
\_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ noon, to give evidence in the above matter  
[add where issued at instance of petitioning creditor on behalf of *C. D.* of  
\_\_\_\_\_, by whom the said petition has been presented], and then and there to  
have and produce [state any particular documents required]: hereof fail not at  
your peril.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 187 .

\_\_\_\_\_  
Registrar.

No. 76.

*Summons under Sect. 96 (in a County Court).*

THE BANKRUPTCY ACT, 1869.

Sect. 96. In the County Court of \_\_\_\_\_, holden at \_\_\_\_\_  
In the matter of *A. B.* of \_\_\_\_\_, a bankrupt.

Rule 166. To *X. Y.* of \_\_\_\_\_  
*Practice,*  
p. 1323 et seq. You are hereby required to attend at the Court House in \_\_\_\_\_ on the  
\_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, to give evidence  
in the above matter [add where issued at instance of petitioning creditor on behalf  
of *C. D.* of \_\_\_\_\_, by whom the said petition has been presented], and then  
and there to have and produce [state any particular documents required]: hereof  
if you fail, having no lawful impediment to be then made known to the Court,  
and allowed by it, the Court may by warrant cause you to be apprehended and  
brought up for examination.

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 187 .

\_\_\_\_\_  
Registrar.

No. 77.

*Order setting aside Pay, Pension, &c., under Sect. 89.*

THE BANKRUPTCY ACT, 1869.

Sect. 89. In the London Bankruptcy Court [or the County Court of \_\_\_\_\_] holden  
at \_\_\_\_\_].

Rule 180. In the matter of *A. B.* of \_\_\_\_\_, a bankrupt.  
*Practice,*  
p. 1378. Whereas it appears to the Court that the said bankrupt is [or has been, *here*  
*state what the bankrupt is or has been*], and as such is in the enjoyment of the  
annual pay [or half-pay or salary or emoluments] of \_\_\_\_\_ pounds, [or pension,  
or compensation, of \_\_\_\_\_ pounds, granted by the Commissioners of Her  
Majesty's Treasury]; and whereas upon the application of *G. H.* of \_\_\_\_\_, the  
trustee of the property of the bankrupt, it appears to the Court just and reason-  
able that the annual sum of \_\_\_\_\_ pounds, portion of the said pay [or as the  
case may be], ought to be paid to the said trustee during the bankruptcy and after  
the close of the bankruptcy to the registrar of this Court, in order that the same  
may be applied in payment of the debts of the said bankrupt, and that such pay-  
ment ought to be paid out of the first monies which shall be due after the  
\_\_\_\_\_ day of \_\_\_\_\_ 187 , and be continued until this Court shall make  
order to the contrary: it is ordered, subject to the consent of [*here insert the*

## BANKRUPTCY FORMS.

*official title of the chief officer of the department under which the pay, half-pay, salary, emolument, pension, or compensation, is enjoyed*], that such portion of the [here insert pay, half-pay, &c.] shall be paid to the trustee accordingly.

Given under the seal of the Court this                      day of                      187 .  
By the Court,  
Registrar.

I consent to the above order.  
Dated this                      day of                      187 .

*F. K., Secretary of State  
for [or as the case may be].*

### No. 78.

#### *Notice to Bankrupt under Sect. 90.*

#### THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of                      holden Sect. 90.  
at                      ].

In the matter of *A. B.* of                      , a bankrupt. Rule 181.  
To *A. B.* *Practice,*  
p. 1879.

Take notice that I intend to apply to this Court on the                      day of  
187 , at                      o'clock in the                      noon, for an order under section 90 of  
the said Act, for the payment of a part of your salary or income to me as trustee  
for the benefit of the creditors under your bankruptcy.

Dated this                      day of                      187 .  
*G. H., Trustee.*

### No. 79.

#### *Order setting aside Salary or Income under Sect. 90.*

#### THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of                      holden Sect. 90.  
at                      ].

In the matter of *A. B.* of                      , a bankrupt. Rule 181.

Whereas it having been made to appear to this Court that the bankrupt is in  
the receipt of a salary [or income] of about                      pounds, as [here set forth the  
*circumstances under which the salary or income is received*]: And whereas upon  
the application of the trustee of the property of the bankrupt, and upon hearing  
the bankrupt, it appears to the Court just and reasonable that the annual sum of  
                    pounds, portion of the said salary [or income] ought to be paid by the  
bankrupt by monthly [or quarterly] payment [according as the bankrupt receives  
his salary or income] to the trustee during the bankruptcy, and after the close of  
the bankruptcy to the registrar of this Court, in order that the same may be  
applied in payment of the debts of the said bankrupt, and that the first of such  
payments ought to be made by the bankrupt on the                      day of  
187 , and be continued monthly [or quarterly] until this Court shall make order  
to the contrary: it is ordered that the said sum shall be paid by the bankrupt in  
manner aforesaid out of his said salary [or income].

Given under the seal of the Court this                      day of                      , 187 .  
By the Court,  
Registrar.

## APPENDIX V.

No. 80.

### *Application for Enforcement of Provision in a Composition.*

#### THE BANKRUPTCY ACT, 1869.

Sects. 28,  
126.  
*Practice*,  
p. 1400.

In the London Bankruptcy Court [or the County Court of                      *holden*  
at                      ].

In the matter of a composition made by *A. B.* of  
*I, F. M.*, of                      , do apply to this Court for an order for the enforcement  
of the provisions of the said composition against                      , on the grounds set  
forth in the annexed affidavit.

Dated this                      day of                      187 .

*F. M.*

No. 81.

### *Affidavit in support of Application for Enforcement of Provisions of a Composition under Sect. 28 or 126.*

#### THE BANKRUPTCY ACT, 1869.

Sect. 28,  
126.  
*Practice*,  
p. 1400.

In the London Bankruptcy Court [or the County Court of                      *holden*  
at                      ].

In the matter of a composition made by *A. B.* of                      .

*I, F. M.*, of                      , make oath and say:—

1. That I am interested in the said composition, having proved my debt as a  
creditor of the said *A. B.* [or as the case may be].

2. That [one of] the provisions of the said composition is [or are] that [*here*  
*set it or them out*].

3. That                      has failed to comply with the said provisions [or as the case  
*may be*].

Sworn at, &c.

*F. M.*

No. 82.

### *Order for Enforcement of Provisions in a Composition.*

#### THE BANKRUPTCY ACT, 1869.

Sects. 28,  
126.  
*Practice*  
p. 1400.

In the London Bankruptcy Court [or the County Court of                      *holden*  
at                      ].

In the matter of a composition made by *A. B.* of                      .

Upon hearing the application of *F. M.* of                      , a person interested in the  
said composition, and reading the affidavit of [*here insert evidence*], the Court  
being of opinion that the provisions of the said composition mentioned in the  
said affidavit should be enforced, it is ordered that [*here insert order*].

Given under the seal of the Court this                      day of                      187 .

By the Court,  
*Registrar.*

To  
Take notice that unless you obey the directions contained in this order, you  
will be deemed to have committed a contempt of Court.

## BANKRUPTCY FORMS.

**No. 83.**

*Application by Trustee for Committal of Bankrupt or other Person.*

**THE BANKRUPTCY ACT, 1869.**

In the London Bankruptcy Court [or the County Court of  
at ].  
In the matter of *A. B.* of , a bankrupt.

I, the trustee of the property of the said bankrupt [or as the case may be], do apply to this Court for an order of committal for contempt of this Court against the said bankrupt [or L. M., ], on the ground set forth in the annexed affidavit.

Dated this            day of            187 .

**G. H., Trustee.**

No. 84.

*Affidavit in Support of Application for Committal of Bankrupt for Contempt under Sect. 19.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of  
at ].

I, *G. H.*, the trustee of the property of the said bankrupt, make oath and say:—

1. That the said bankrupt did wilfully fail to produce to the first meeting of his creditors, held on the \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_, at \_\_\_\_\_, the statement of his affairs, the production of such statement being a duty imposed upon him by the nineteenth section of the said Act, and by the Rules of Court.

[or 1. That the said bankrupt did attend at the first meeting of his creditors held on the            day of            187 , at            , and wilfully refused to submit to be examined at such meeting in respect of his property [or his creditors], the submitting to examination being a duty imposed upon him by the nineteenth section of the said Act.]

[1. That the said bankrupt did wilfully fail to attend a meeting of his creditors held on the \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_, at \_\_\_\_\_ [or to wait on me at my office on the \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_], the attending such meeting [or waiting on me] being a duty imposed upon him by the nineteenth section of the said Act.

[or 1. That the said bankrupt has wilfully failed to execute [here describe the deed, &c., that he has failed to execute] the execution of such deed when required by me being a duty imposed upon him by the nineteenth section of the said Act.

2. [That the said bankrupt was on the \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_, duly served with a notice, a copy of which is hereunto annexed, by leaving the same at his usual place of residence, requiring him to attend the said meeting], [or to execute the above-mentioned deed, &c.]

[or 1. That the said bankrupt has wilfully failed to perform the duty imposed upon him by the nineteenth section of the said Act of *here insert any act he has been required to do by any special order of the Court, stating the day on which the order was made.*

2. That the said bankrupt was duly served with a copy of such order by leaving the same at his usual place of residence on the                      day of                      187 .

[or 1. That the said bankrupt has failed to deliver up possession of *[here state the property he has failed to deliver up]*, which property is divisible amongst his creditors under the said Act, and which said property was *[or is]* in his possession or control, he having been required by me to deliver up the said property by notice, a copy of which is herunto annexed, and which notice was duly served upon him on the       day of       187    , at his usual place of residence.]

Sworn at, &c.

**G. H.**

## APPENDIX V.

No. 85.

### *Affidavit of Trustee under Sect. 93.*

THE BANKRUPTCY ACT, 1869.

Sect. 93.  
Practice,  
p. 1377.

In the London Bankruptcy Court [or the County Court of                      holden  
at                      ].

In the matter of *A. B.* of                      , a bankrupt.

*I, G. H.*, the trustee of the property of the said bankrupt, make oath and say:—

1. That I believe that *L. M.* of                      , hath in his possession or powers  
[*here set out the capacity in which the person stands to the bankrupt*], certain  
monies [and securities] belonging to the bankrupt, that is to say [*here set out and  
describe the particular monies and securities*].

2. That on the                      day of                      187                      , I did apply personally to the  
said *L. M.* to pay and deliver to me the said monies and securities, and that he  
did not then, nor has he since paid or delivered to me the same [or That I, on the  
day of                      , posted a letter to the said *L. M.*, addressed to him at  
                    , calling upon him to, &c., and that on the                      day of  
187                      , I posted another letter, by which I again called upon him to, &c., and that  
he has failed to pay and deliver the same].

3. That I firmly believe that the said *L. M.* is not entitled by law to retain  
such monies [and securities] as against the bankrupt or against me as the trustee  
of the property of the bankrupt.

Sworn at, &c.

*G. H.*

No. 86.

### *Affidavit of Person interested in a Composition for Committal.*

THE BANKRUPTCY ACT, 1869.

Sect. 23.  
Practice,  
p. 1400.

In the London Bankruptcy Court [or the County Court of                      holden  
at                      ].

In the matter of a composition made by *A. B.* of                      .

*I, F. M.*, of                      , make oath and say:—

1. That                      was by an order of this Court made on the                      day of  
                    187                      , ordered to [*here set out the order*].

2. That a copy of the said order was duly served on the said                      .

3. That the said                      has failed to obey such order.

Sworn at, &c.

*F. M.*

No. 87.

### *Notice of Application for Committal under Sect. 19.*

THE BANKRUPTCY ACT, 1869.

Sect. 93.  
Practice,  
p. 1339.

In the London Bankruptcy Court [or the County Court of                      holden  
at                      ].

In the matter of *A. B.* of                      , a bankrupt.

To the said bankrupt.

Take notice that the trustee of the property of the said bankrupt will on the  
day of                      187                      , at                      o'clock in the                      noon, apply to  
this Court for an order for your committal to prison for contempt of this Court,  
you having failed to perform the duty imposed on you by the nineteenth section  
of the said Act [*here set out the duty he has failed to perform*]. And further  
take notice that you are required to attend the Court on such day at the hour  
before stated to show cause why an order for your committal should not be made.

Dated this                      day of                      187                      .

Registrar.



# BANKRUPTCY FORMS.

No. 88.

*Notice of Application for Committal under Sect. 93.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of holden Sect. 98.  
at ]. In the matter of *A. B.* of , a bankrupt. *Practice,*  
To [here insert name, address, and description of the person to whom the notice p. 1377.  
is to be sent].

Take notice that the trustee of the property of the said bankrupt will on the  
day of 187 , at o'clock in the noon, apply to  
this Court for an order for your committal to prison for contempt of this Court,  
you having failed to pay and deliver to him certain monies [and securities] belong-  
ing to the bankrupt in your possession or power as [here state whether as treasurer,  
banker, &c.,] that is to say [here set out and describe the particular monies and  
securities]. And further take notice that you are required to attend the Court on  
such day at the hour before stated to show cause why an order for your committal  
should not be made.

Dated this day of 187 .  
Registrar.

No. 89.

*Notice of Application for Committal under Sects. 28, 126.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of holden Sects. 28  
at ]. In the matter of a composition made by *A. B.* of . *126.*  
To *Practice,*  
Take notice that *C. D.* of , will on the day of 187 ,  
at o'clock in the noon, apply to this Court for an order for your  
committal to prison for contempt of this Court, you having disobeyed the order of  
this Court made on the day of 187 , [here set out order]. And  
further take notice that you are required to attend the Court on such day at the  
hour before stated, to show cause why an order for your committal should not be  
made.

Dated this day of 187 .  
Registrar.

No. 90.

*Order of Committal under Sect. 19.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of holden Sect. 19.  
at ]. In the matter of *A. B.* of , a bankrupt. *Practice,*  
Upon the application of the trustee of the property of the bankrupt, and upon  
hearing the bankrupt [or if he does not appear, reading the affidavit of [here insert  
name and description of person by whom the notice to show cause was served] and  
upon reading the affidavit of [enter evidence]], the Court being of opinion that the  
bankrupt has been guilty of a contempt of this Court by having failed to [here  
follow the notice], it is ordered that the said bankrupt do stand committed to  
[here insert prison] for his said contempt.

Given under the seal of the Court this day of , 187 .  
By the Court,  
Registrar.

## APPENDIX V.

No. 91.

*Order of Committal under Sect. 93.*

THE BANKRUPTCY ACT, 1869.

Sect. 93.  
Practice,  
p. 1377.

In the London Bankruptcy Court [or the County Court of                      holden  
at                      ]

In the matter of *A. B.* of                      , a bankrupt.

Upon the application of the trustee of the property of the bankrupt, and upon hearing *L. M.* [or, if *L. M.* does not appear, reading the affidavit of [here insert name and description of person by whom the notice to show cause was served], and upon reading the affidavit of [enter evidence]], the Court being of opinion that *L. M.* has been guilty of a contempt of this Court by having failed to pay and deliver to the said trustee certain monies [and securities] [here follow the notice], and that the said *L. M.* do stand committed to [here insert prison] for his said contempt.

Given under the seal of the Court this                      day of                      187 .

By the Court,  
Registrar.

No. 92.

*Order of Committal under Sect. 28 or 126.*

THE BANKRUPTCY ACT, 1869.

Sects. 28,  
126.  
Practice,  
p. 1400.

In the London Bankruptcy Court [or the County Court of                      holden  
at                      ].

In the matter of *A. B.* of                      , a bankrupt [or, where bankruptcy annulled or proceeding under Sect. 126, In the matter of a composition made by *A. B.* of                      ].

Whereas by an order of this Court made on the                      day of                      187 , [here recite the order]. Now upon the application of *C. D.* of                      , and upon hearing *A. B.* (or as the case may be), [or, if he does not appear, reading the affidavit of [here insert name and description of person by whom the order was served on *A. B.*], and upon reading the affidavit of [enter evidence]], the Court being of opinion that the said *A. B.* has been guilty of a contempt of this Court by his disobedience of the said order, it is ordered that the said *A. B.* do stand committed to [here insert prison] for his said contempt.

Given under the seal of the Court this                      day of                      187 .

By the Court,  
Registrar.

No. 93.

*Warrant of Committal for Contempt.*

Sects. 10, 28,  
93, 126.  
Practice,  
p. 1330.

In the London Bankruptcy Court [or the County Court of                      holden  
at                      ].

In the matter of *A. B.* of                      , a bankrupt.

To *X. Y.*, officer of this Court [or, where warrant issues from a County Court, To the High Bailiff and others the Bailiffs of the said Court] and to the Governor or Keeper of the [here insert the prison].

Whereas by an order of this Court bearing date the                      day of                      187 , it is ordered that the said bankrupt [or *L. M.* of                      ] should stand committed for contempt of this Court.

These are therefore to require you the said *X. Y.* [or high bailiffs, bailiffs], and others, to take the said *A. B.* [or *L. M.*] and to deliver him to the governor or keeper of the above-named prison, and you the said governor or keeper to receive the said *A. B.*, and him safely to keep in the said prison until such time as this Court shall order.

Given under the seal of the Court this                      day of                      187 .

By the Court,  
Registrar.

# BANKRUPTCY FORMS.

No. 94.

## *Order for Discharge from Custody on Contempt.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of \_\_\_\_\_] holden *Practice,*  
at \_\_\_\_\_ p. 1339.

In the matter of *A. B.* of \_\_\_\_\_, a bankrupt.  
Upon application made this \_\_\_\_\_ day of \_\_\_\_\_ for *A. B.*, who was committed to prison for contempt by order of this Court, dated the \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_, and upon reading his affidavit showing that he has cleared [or is desirous of clearing] his contempt and has paid the costs occasioned thereby, and upon hearing the trustee, [or *C. D.* of \_\_\_\_\_], it is ordered that the governor or keeper of [here insert name of prison] do discharge the said *A. B.* out of his custody, as to the said contempt.

Given under the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_.  
By the Court,  
Registrar.

No. 95.

## *Warrant to Apprehend a Person Summoned under Sect. 96.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of \_\_\_\_\_] holden *Sect. 24.*  
at \_\_\_\_\_ *Practice,*  
p. 1375.

In the matter of *A. B.* of \_\_\_\_\_, a bankrupt.  
To *X. Y.*, and his assistants of this Court [or where warrant issues from a County Court, To the High Bailiff and others the Bailiffs of the said Court].

Whereas by summons or subpoena dated the \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_, and directed to the said *A. B.* [or to *F. M.* of \_\_\_\_\_], he was required personally to be and appear on the \_\_\_\_\_ day of \_\_\_\_\_ instant, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon at this Court, to be examined; and which said summons or subpoena was afterwards, on the \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_, as hath been proved upon oath, duly served upon the said \_\_\_\_\_, and a reasonable sum was tendered him for his expenses. And whereas the said \_\_\_\_\_ having no lawful impediment made known to or allowed by this Court hath not appeared before me as by the said summons or subpoena he was required, but therein has wholly made default. These are therefore to will, require, and authorise you and every of you to whom this warrant is directed, immediately upon receipt hereof, to take the said \_\_\_\_\_ and bring him before this Court on the \_\_\_\_\_ day of \_\_\_\_\_, in order to his being examined as aforesaid, and for your so doing this shall be your sufficient warrant.

Given under the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_ 187\_\_\_\_.  
By the Court,  
Registrar.

No. 96.

## *Order to Postmaster-General.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of \_\_\_\_\_] holden *Sect. 52.*  
at \_\_\_\_\_ *Practice,*  
p. 1333.

In the matter of *A. B.* of \_\_\_\_\_, a bankrupt.  
Upon the application of *G. H.* of \_\_\_\_\_, the trustee of the property of the above bankrupt, it is ordered that for a period of three months from [here insert the date of the order of adjudication] all post letters directed or addressed to the said bankrupt at [here insert only the place or places of which the bankrupt is described in such order of adjudication] shall be re-directed, sent, or delivered by the Postmaster-General or other officers acting under him to the said trustee at

## APPENDIX V.

, and that a sealed duplicate of this order be forthwith transmitted by the trustee to the Postmaster-General, or officers acting under him.

Given under the seal of the Court this                      day of                      187 .

By the Court,  
Registrar.

No. 97.

*Certificate to Speaker of the House of Commons under Sect. 122.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
p. 1339.

In the London Bankruptcy Court [or the County Court of                      ] holds  
at                      ]

In the matter of *A. B.* of                      , a bankrupt.

It is hereby certified by this Court to the Right Honourable the Speaker of the House of Commons, that the said *A. B.*, being a Member of the Commons House of Parliament, was by and under an order of adjudication made by this Court on the                      day of                      187 , adjudged a bankrupt. And that although one year has expired since the date of the said order of adjudication was made, the said order of adjudication hath not been annulled, nor have the debts of the creditors who proved debts under the bankruptcy been fully paid or satisfied.

Certified under the seal of the Court this                      day of                      187 .

By the Court,  
Registrar.

No. 98.

*Order to Summon a Common Jury.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
pp. 1310—11.

In the London Bankruptcy Court.

In the matter of                      .

Upon motion this day made, &c.

It is ordered that the sheriff do summon a sufficient number of common jurors for the trial of a certain question [or certain questions] of fact, to be tried before the Chief Judge, in his Court, at                      , in the county of Middlesex, on the                      day of                      18 , at                      of the clock in the forenoon precisely.

And it is ordered that the said sheriff do attend with the said jurors accordingly.

No. 99.

*Order for a Special Jury.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
pp. 1310—11

In the matter of                      .

Upon motion this day made, &c.

It is ordered that, at the expense of the plaintiff [or defendant, or petitioner, or respondent] in the first instance, forty-eight special jurors be nominated by ballot out of the special jurors' list for the county of                      , of persons qualified to serve on special juries for the said county, and be reduced before the under sheriff of the said county; and that twelve of them be struck out by each party, and that the names of the remaining twenty-four be placed on a panel for the trial of a certain question [or certain questions] of fact [or as to the amount of damages sustained by                      ] in this cause [or matter], and that the said sheriff of the said county do cause the said twenty-four jurors to be summoned to attend at the said trial, on, &c. [as in preceding form], and that the said sheriff do also summon twelve common jurors to attend at the said trial on the day and at the time and place aforesaid. And it is ordered that the said sheriff and the said jurors do attend accordingly.

N.B.—If special jury, obtained on the application of either party, without the special direction of the Court, leave out the words "in the first instance."

## BANKRUPTCY FORMS.

**No. 100.**

*Form of Oath to be taken by the Usher of the Court on Jury Retiring to Consider their Verdict.*

**THE BANKRUPTCY ACT, 1869.**

You shall well and truly keep this jury in some private and convenient place, without meat, drink, or fire (candle-light excepted). You shall not suffer any person to speak to them, neither shall you speak to them yourself, without leave of the Court, except to ask them if they are agreed on their verdict.

**No. 101.**

## REGISTER of BANKRUPTS in the LONDON BANKRUPTCY COURT.

Name of Bankrupt.	
Residence.	
Description.	
Petitioning Creditor and Description.	
Attorney.	
Date of Adjudication.	
Day for First Meeting.	
Date of Appointment, and Name and Address of Trustee.	
Day for Public Examination of Bankrupt.	
Date of annulling Adjudication, and Reason.	
Dividend, Amount, and Date.	
Close of Bankruptcy.	
Application for Order of Discharge.	
Date of Order of Discharge and why granted.	

*A similar Form of Register of Bankruptcies in the County Courts to be used, adding a heading showing name of Court in which matter is.*

**No. 102.**

**BANKRUPTCY PETITION** Book to be kept by Chief Registrars of the London Bankruptcy Court, and Registrars of the County Courts. *Practice*, p. 1270.

Name of Bankrupt.
Residence and Description.
Trader.
Non-trader.
Petitioning Creditor and Description.
Attorney.
Date of Adjudication.
Act of Bankruptcy committed.
Registrar.
When Advertised.
First Meeting.
Trustee.
Dividend.
Proceedings consolidated, impounded, or transferred ( <i>as the case may be</i> ).
When Annulled.
Close of Bankruptcy.
Date of Order of Discharge.

# APPENDIX V.

## No. 103.

*Practice,*  
p. 1294.

**DEBTON'S SUMMONS BOOK** to be kept by the Chief Registrar in the London Bankruptcy Court or a Registrar of a County Court.

Debtor.	Creditor.	When Filed.	Attorney.	Result of Summons.

*Practice,*  
p. 1384

## No. 104.—ESTATE BOOK.

(*Pro forma.*)

Dates.	Receipts or Payments.	State of Bank Account.	State of Trustee's Account.
		£ s. d.	£ s. d.
1870. March 14	Dr. Received cash on bankrupt's desk . . . . .		5 0 0
" "	" Received balance on bankrupt's deposit account . . . . .		39 14 6
" "	Cr. Paid into bank account . . . . .	40 0 0	£44 14 6 40 0 0
" " 20	Dr. Received arrears of rent due by Jas. Johnstone . . £25 0 0		£4 14 6
" "	" Half-year's rent to Christmas from do. . . . . 17 10 0		
" "	" Do. from William George for shop . 27 10 0		
" "	" Do. from John Williams for cellar . 5 0 0		75 0 0
" "	Cr. Paid into bank . . . . .	75 0 0	£79 14 6 75 0 0
" " 30	Dr. Received from John Thompson debt due by him . . 75 16 8	£115 0 0	£4 14 6
" "	" Received from Wm. Jones, do. . . . 5 2 6		
" "	" . . . . . £80 19 2		80 19 2
" "	Cr. Paid into bank . . . . .	80 0 0	£85 13 8 80 0 0
		£195 0 0	£5 13 8

# BANKRUPTCY FORMS.

Dates.	Receipts or Payments.	State of Bank Account.	State of Trustee's Account.
1870. March 31	<i>Dr.</i> Received proceeds of household furniture sold by J. Williams, auctioneer . . .	£ s. d. 150 8 4	£ s. d. 150 8 4
" "	<i>Cr.</i> Paid into bank . . .	£195 0 0 150 8 4	£155 2 0 180 8 4
" April 3	<i>Dr.</i> Received dividends on gas shares payable at Lady Day, 1870 . . . £3 0 0	345 8 4	5 13 8
" "	<i>Cr.</i> Price of gas shares sold . . . 126 0 0		129 0 0
" "	<i>Cr.</i> Paid into bank . . .	126 0 0	184 13 8 126 0 0
" " 16	<i>Dr.</i> Received from Thomas Thomson, amount of debt due by him . . .		£8 13 8
" "	<i>Cr.</i> Paid into bank . . .	15 0 0	8 2 4
" " 30	<i>Dr.</i> Received per draft on bank account . . .	£486 8 4 20 0 0	16 16 0 15 0 0
" "	<i>Cr.</i> Paid to account of allowance to bankrupt . . .	£406 8 4	£21 16 0 20 0 0
" May 2	<i>Dr.</i> Received per draft on bank account . . .	10 0 0	1 16 0
" "	<i>Cr.</i> Paid rates and taxes . . .	456 8 4	10 0 0
" June 1	<i>Dr.</i> Received per draft on bank account . . .	£456 8 4 30 0 0	11 16 0 9 6 0
" "	<i>Cr.</i> Paid allowance to bankrupt . . . 13 12 0	426 8 4	£2 10 0
" "	" Law expenses and miscellaneous charges . . . 16 12 0		30 0 0
Balance in bank at 14 June, 1870 (date of audit), exclusive of interest from commencement of account, to be ascertained at the end of the year . . .		426 8 4	30 4 0
Balance in the trustee's hands at 14 June, 1870 . . .			2 6 0
Add balance in bank as above . . .			426 8 4
Total balance of assets realised in favour of the estate, as at 14 June, 1870 . . .			£428 14 4

(Signed)

G. H., Trustee.

# APPENDIX V.

*Prodiv.*  
*y. 1390.*

## No. 105.—ANNUAL RETURN TO BE MADE BY TRUSTEES.

1.	Name of Bankrupt	
2.	Residence and Description.	
3.	Trader.	
4.	Non-trader.	
5.	Date of Liquidation.	
6.	Name and Description of the Trustee.	
7.	Names and Descriptions of the Committee of Inspection.	
8.	Amount of Assets in the Bankrupt's Statement.	
9.	Amount of Assets on Trustee's Estimate.	
10.	Amount of Liabilities.	
11.	Amount of Receipts.	
12.	Amount of Allowance paid to Bankrupt, if any?	
13.	If Bankruptcy annulled on Acceptance of Composition, or Scheme of Settlement, Terms of Composition or Scheme to be shortly stated.	
14.	Amount of Dividends declared.	
15.	Date of the Close of the Bankruptcy.	
16.	Date of the Discharge of the Bankrupt.	
17.	Amount of Dividends unpaid.	
18.	Amount of Expenses incurred and paid under the following heads : <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> <div>Trustees' Remuneration.</div> <div>Law Charges paid as taxed, including all Court Fees.</div> <div>Incidental Outlay.</div> <div>Extraordinary Outlay, such as Rents and Wages, incurred in Bankruptcy, or for Materials required to complete contracts, &amp;c.</div> </div>	

NOTE.—The amount of the payments included in columns 12, 14, and 18 when set against the receipts in column 11 ought to bring out the balance of the trustees' last audited account.



# BANKRUPTCY FORMS.

No. 106.

*Petition under Sections 125, 126.*

THE BANKRUPTCY ACT, 1869.

To the London Bankruptcy Court [or the County Court of  
at ]. holden *Practice,*  
The humble petition of A. B., of, &c. p. 142d.  
Showeth,

That your petitioner alleges that he is unable to pay his debts, and is desirous of instituting proceedings for liquidation of his affairs by arrangement or composition with his creditors, and hereby submits to the jurisdiction of this Court in the matter of such proceedings. (*In the case of a trader, add "and that your petitioner estimates the amount of the debts owing by him to his creditors at £ "*).

[*Add where petition presented to a County Court, That your petitioner does not reside or carry on business within the district of the London Bankruptcy Court.*]

Your petitioner therefore prays that notices convening such general meeting or meetings of his creditors as may be necessary to be given by him during the course of such proceedings may be sent in the prescribed manner and that such resolution or resolutions as his creditors may lawfully pass in the course of such proceedings, and as may require registration, may be duly registered by the registrar of the Court.

And your petitioner shall ever pray, &c.

A. B.

Signed by the petitioner, A. B., on  
the day of , 18 ,  
in the presence of

Registrar  
or

Attorney. (Address.)

*If the petition be by partners alter the form accordingly.*

No. 107.

*Affidavit in support of Petition under Sections 125, 126.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of  
at ]. holden *Practice,*  
I, A. B. of make oath and say, as follows:— p. 142L.  
I am the [or one of the] petitioner [or petitioners] named in the petition here-  
unto annexed.

I verily believe that it will be most convenient to the creditors whose debts exceed ten pounds that the general meeting should be held at

Sworn at

A. B.

*Where an Attorney is employed add the following Certificate.*

I certify my belief that it will be most convenient to the creditors of the petitioner that the general meeting should be held at [as above].

C. D.,

Attorney in the matter of the petition.

## No. 108.

THE BANKRUPTCY ACT, 1869.

In the London Court of Bankruptcy [or the County Court of \_\_\_\_\_] held at \_\_\_\_\_

In the matter of proceedings for liquidation by arrangement or composition with creditors instituted by A. B. of (description as in petition).

A general meeting of the creditors of the above-named person or persons is hereby summoned to be held at *here insert name of town, and street or place* on the *insert day* of *insert instant or next*, at *insert o'clock* in the *insert noon* precisely. The sections of the Bankruptcy Act, 1869, under which the proceedings are instituted, provide as follows:—

Here, cited from clause 125, sub-sections 1 and 5, and the two first paragraphs of sec. 126.

A form of proof and proxy will be found on the third side of this notice.  
Dated the \_\_\_\_\_ day of \_\_\_\_\_, 187\_\_\_\_\_.

(Signed) *A. B. (Doctor)*

or,  
C. D. (adding address).

Attorney for the said debtor.

*In case of partnership the notice must be signed by one of the partners in his partnership name, or by all the partners, or by a solicitor or solicitors on their behalf.*

## No. 109.

*Affidavit to be Annexed to the Notice summoning First General Meeting.*

In the London Court of Bankruptcy [or the County Court of \_\_\_\_\_] at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

In the matter of proceedings for liquidation by arrangement or composition with creditors instituted by *A. B.*, of, &c.

I                      of                      make oath and say, as follows:—

The said *A. B.* was at the date of the institution of the said proceedings and still is justly and truly indebted to me in the sum of \_\_\_\_\_ for (state consideration) for which said sum or any part thereof I say that I have not nor hath any person by my order or to my knowledge or belief for my use had or received any manner of satisfaction or security whatsoever, save and except the following:—

[Here set out security, or if bills be held specify them in the schedule].

[illegible]

Sworn at

I appoint C. D., of, &c., my proxy in the above matter.

*E. F.* [or *G. H.* of \_\_\_\_\_ in partnership name].

(This affidavit should, it would seem, be slightly altered if used for the purpose of proof after resolution for liquidation by the substitution of the words "of the appointment of the trustee" for the words "of the institution of the said proceedings.")

# BANKRUPTCY FORMS.

No. 109b.

*Proxy—when not Added to Proof under Liquidation.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of                      holden *Practice,*  
at                      ]. *p. 1433.*

In the matter of proceedings for liquidation by arrangement or composition  
with creditors, instituted by                      of  
I,                      of                      do hereby appoint                      of                      as my  
proxy in this matter, excepting as to the receipt of dividend.

As witness my hand this                      day of                      , 187                      For self and partners.

Signed by the said                      , in the presence of                      , of                      .

*NOTE.—When the creditor desires that his Proxy should receive dividends, he should strike out the words "excepting as to the receipt of dividends," putting his initials thereto.*

No. 110.

*Request with List of Creditors.*

THE BANKRUPTCY ACT, 1869.

In the London Court of Bankruptcy [or the County Court of                      holden *Practice,*  
at                      ]. *p. 1437.*



In the matter of proceedings for liquidation by  
arrangement or composition with creditors in-  
stituted by (insert name; the address need not  
be inserted).

To the Registrar.

I [or we] request that the notices of the general meeting on the  
day of                      , 187                      , herewith delivered to you, duly addressed and stamped  
for post, may be sent to the under scheduled creditors.  
Dated this                      day of                      , 187                      .

*(To be signed by the debtor or one of the  
debtors or his or her attorney.)*

No.	Names of Creditors or Firms of Creditors.	Addresses.	Estimated Amount of Debt.		

## APPENDIX V.

No. 111.

*Notice for Gazette.*

THE BANKRUPTCY ACT, 1869.

In the London Court of Bankruptcy [or the County Court of \_\_\_\_\_] holden at \_\_\_\_\_.

In the matter of proceedings for liquidation by arrangement or composition with creditors instituted by *A. B.* of \_\_\_\_\_.

Notice is hereby given that a first (or second, as the case may be), general meeting of the creditors of the above-named person or persons, has been summoned to be held at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon precisely.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 187 \_\_\_\_\_.

*A. B., or*

*C. D. (Attorney for the said A. B.).*

*The signature to this notice, if not sealed, must be verified by affidavit, taken signed by a London solicitor.*

No. 112.

*Order Changing Place of Meeting.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
*p. 1428.*

In the London Court of Bankruptcy [or the County Court of \_\_\_\_\_] holden at \_\_\_\_\_.

In the matter of proceedings for liquidation by arrangement or composition with creditors instituted by \_\_\_\_\_ of, &c. (*following description as in petition*).

Upon sufficient cause this day shown to the satisfaction of the Court, the general meeting of creditors in this matter summoned for the \_\_\_\_\_ day of \_\_\_\_\_ is hereby directed to be held at \_\_\_\_\_, in lieu of the place originally named. And hereof let notice be given forthwith.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 187 \_\_\_\_\_.

Registrar, or  
Deputy Registrar.

No. 113.

*Nomination of Receiver or Manager by Creditors.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
*p. 1429.*

In the London Court of Bankruptcy [or in the County Court of \_\_\_\_\_] holden at \_\_\_\_\_.

In the matter of proceedings for liquidation by arrangement or composition with creditors, instituted by *A. B.* of, &c.

We, the undersigned, being a majority in value of the creditors of the said *A. B.*, do hereby nominate and appoint Mr. \_\_\_\_\_ of \_\_\_\_\_ to be receiver (or manager) of the trade effects (and business) of the said *A. B.*, pending the resolution to be come to by the creditors under the said proceedings.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 187 \_\_\_\_\_.

Witnesses' Name and Address.	Creditor's Signature.	Amount of Debt.

## BANKRUPTCY FORMS.

No. 114.

*List of Creditors Assembled to be Used at every General Meeting.*

THE BANKRUPTCY ACT, 1869.

In the London Court of Bankruptcy [or the County Court of  
at ].

holden *Practice,*  
p. 1342 and  
pp. 1344—5.

In the matter of  
General meeting, held at                      this                      day of                      , 187 .

No. of Assents of Creditors whose Debts exceed £20.	Number.	Names of Creditors assembled.	Amount of Assent.	Amount of Proof.
1	4			
	2			
1	3			
1	4			
	5			
1	6			
1	7			
		Total number of creditors assembled.		
5		Total number of assents.		
		Totals . .	£	£

No. 115.

*First General Meeting where Liquidation by Arrangement resolved on.*

THE BANKRUPTCY ACT, 1869.

In the London Court of Bankruptcy [or the County Court of \_\_\_\_\_], holden \_\_\_\_\_, *Prætor*,  
at \_\_\_\_\_, p. 1443.

In the matter of proceedings for liquidation by arrangement or composition  
with creditors instituted by .

We, the undersigned, being the statutory majority of creditors assembled at the general meeting in the above matter, duly held at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 187\_\_\_\_, in accordance with the provisions of the said Act, do hereby resolve as follows:—

- (1.) That the affairs of the said shall be liquidated by arrangement and not in bankruptcy.
- (2.) That be and he is hereby appointed trustee.
- (3.) That be and they are hereby appointed a committee of inspection (or in lieu of 2 and 3, the following :—That a subsequent meeting be held at on at o'clock a.m. [or p.m.] precisely, for the appointment of a trustee with or without a committee of inspection).

(4.) That be entrusted with the registration of this special resolution.  
**F. K., Chairman.** [Here follow signatures of creditors.]

## APPENDIX V.

No. 116.

*First General Meeting where Composition resolved on.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
p. 1452.

In the London Court of Bankruptcy [or in the County Court of  
holden at ].

In the matter of proceedings for or towards the liquidation by arrangement  
or composition with creditors instituted by *A. B.* of , &c.

We, the undersigned, being the statutory majority of creditors assembled at the  
first meeting in the above matter, duly held at , this day of  
, 187 , in accordance with the provisions of the said Act, do hereby  
resolve as follows:—

1. That a composition of in the pound shall be accepted in satisfaction of the debts due to the creditors from the said *A. B.*
2. That such composition be payable as follows [*here state whether the same is to be payable in one payment or by instalments, and at what date from the second meeting*].
3. That the security of *C. D.* be accepted for the said composition [or the instalments thereof], or that the said composition [or the instalments thereof] be secured to the satisfaction of *E. F.* and *G. H.*
4. That *I. K.* be appointed trustee in the matter.

[*Here follow signatures of creditors.*]

*F. K.*, Chairman.

No. 117.

*Notice concerning Second General Meeting.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
p. 1454.

In the London Court of Bankruptcy [or in the County Court of  
holden at ].

In the matter of proceedings for liquidation by arrangement or composition  
with creditors instituted by *A. B.*, of , &c.

A second general meeting of the creditors of the above-named person [or persons] is hereby summoned to be held at , on , the day of instant [or next], at o'clock in the noon precisely. A majority in number and value of the creditors then assembled may confirm the resolution come to at the first general meeting, or a majority in number representing three-fourths in value of such creditors may by resolution declare that the affairs of the above-named person [or persons] may be liquidated by arrangement and not in bankruptcy.

Dated the day of 187 .

(Signed) *A. B.* (*Debtor*),

or

*C. D.* (*adding address*),  
Attorney for the said debtor.

No. 118.

*Resolution at Second General Meeting.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
p. 1455.

In the London Court of Bankruptcy,  
or,

( )

In the County Court of , holden at .

In the matter of proceedings for or towards the liquidation by arrangement or composition with creditors instituted by *A. B.*, of , &c.

We, the undersigned, being the statutory majority of creditors assembled at the

## BANKRUPTCY FORMS.

second meeting in the above matter, duly held at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 187\_\_\_\_, in accordance with the provisions of the said Act, do hereby confirm the resolution passed by the statutory majority of the creditors of the said *A. B.* assembled at the first meeting, [*or do hereby resolve that the affairs of the said A. B. be liquidated by arrangement and not in bankruptcy*]. [*and following on as in the form provided for resolution at the first general meeting, where liquidation by arrangement is resolved on*].

[Here follow signatures of creditors.]

**F. K., Chairman.**

No. 119.

*To be added to Statement of Affairs in cases under Sect. 126 where necessary.*

List of bills of exchange or promissory notes on which the debtor is liable, and of the holder whereof he is ignorant. *Practice, p. 1452.*

Acceptor's Name.	Name of Person to whom payable.	Due Date.	Amount of Bill or Note.	Here state any other particulars within the Debtor's knowledge respecting the Bill or Note.
	Total to be added to list of unsecured } creditors . . . ) £			

**No. 120.**

*Form of Affidavit to be used upon Registration of a Special or Extraordinary Resolution.*

In the London Bankruptcy Court [or the County Court of  
at ]. holden *Practice*,  
p. 1455.

In the matter of proceedings for liquidation by arrangement or composition  
with creditors instituted by A. B. of \_\_\_\_\_, &c.

I, the above-named *A. B.* [*or C. D.* of, &c., as the case may be], make oath and say as follows:—

1. That I verily believe that the resolutions, statement of affairs, proofs, and proxies filed in this matter are the whole of the resolutions, statement, proofs, and proxies come to and produced at the general meeting (or meetings) held in this matter on the            day of           , (and the            day of           ).

2. (In cases of composition.) That I verily believe that the gross amount of composition payable to my creditors [or to the creditors of the said A. B.] does not exceed £ .

**SWORN, &c.**

## APPENDIX V.

No. 121.

### *Certificate of Trustee's Appointment.*

THE BANKRUPTCY ACT, 1869.

*Practise,*  
p. 1441.

In the London Court of Bankruptcy [or the County Court of                      holden  
at                      ].

In the matter of a special resolution for liquidation by arrangement of the  
affairs of *A. B.* of                      , &c.

This is to certify that *C. D.* of, &c., has been appointed, and is hereby declared  
to be trustee under this liquidation by arrangement.

Given under my hand and the seal of the Court this                      day of                      ,  
187                      .

Registrar.

No. 122.

### *Resolution for Debtor's Discharge.*

THE BANKRUPTCY ACT, 1869.

*Practise,*  
p. 1445.

In the London Court of Bankruptcy [or the County Court of                      holden  
at                      ].

In the matter of a special resolution for liquidation by arrangement of the  
affairs of *A. B.* of                      , &c.

We, the undersigned, being the statutory majority of the creditors assembled  
at the general meeting of creditors in the above matter, duly held at  
this                      day of                      187                      , in accordance with the provisions of the said  
Act do resolve—

That the discharge of the said *A. B.* be and the same is hereby granted.

[or that the discharge of the said *A. B.* be granted to him on the                      day  
of                      187                      , or that the discharge of the said *A. B.* be granted to him on  
(here state the conditions on which the same is granted)].

That the close of this liquidation shall take place on and from the  
day of                      , 187                      .

That *G. H.*, the trustee, be released on and from the                      day of                      ,  
187                      .

No. 123.

### *Report of Trustee as to Debtor's Discharge.*

THE BANKRUPTCY ACT, 1869.

*Practise,*  
p. 1445.

In the London Court of Bankruptcy [or the County Court of                      holden  
at                      ].

In the matter of a special resolution for liquidation by arrangement of the  
affairs of *A. B.* of                      , &c.

I, being the trustee under the above liquidation, do hereby certify and report  
that a general meeting of the creditors of the said *A. B.* was held at  
on the                      day of                      , and that the discharge of the debtor was then  
granted by a special resolution of the creditors then assembled.

Dated this                      day of                      , 187                      .

Trustee.

To the Registrar.



## BANKRUPTCY FORMS.

No. 124.

### *Debtor's Discharge.*

THE BANKRUPTCY ACT, 1869.

In the London Court of Bankruptcy [or the County Court of \_\_\_\_\_] holden *Practice*  
at \_\_\_\_\_, p. 1445.

In the matter of a special resolution for liquidation by arrangement of the affairs of *A. B.* of \_\_\_\_\_, &c.

Whereas the trustee under the said liquidation has certified and reported to me that (*here follows certificate of trustee*).

I do, therefore, hereby certify such discharge in pursuance of the statute in that behalf.

Given under my hand and the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_, 187 \_\_\_\_\_.

Registrar.

No. 125.

### *Notice to Creditors to come in and Prove their Debts.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of \_\_\_\_\_] holden *Practice*  
at \_\_\_\_\_, p. 1447.

In the matter, &c.

The creditors of the above-named *A. B.*, who have not already proved their debts, are required, on or before the \_\_\_\_\_ day of \_\_\_\_\_, to send their names and addresses, and the particulars of their debts or claims, to me, the undersigned \_\_\_\_\_, of \_\_\_\_\_, the trustee under the liquidation, or in default thereof they will be excluded from the benefit of the dividend proposed to be declared.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 187 \_\_\_\_\_.

Trustee.

No. 126.

### *Notice to Claimant of Trustee's rejection of his Claim.*

THE BANKRUPTCY ACT, 1869.

In the Court of Bankruptcy, London [or the County Court of \_\_\_\_\_] holden at \_\_\_\_\_.

*Practice*  
p. 1447

In the matter of, &c.

Take notice, that I, the undersigned trustee under this liquidation, do hereby reject your claim against the estate (or to the extent of £ \_\_\_\_\_, part of your claim), and that I intend to exclude you from dividend in respect thereof. And further take notice, that such exclusion will be final, unless within fourteen days you apply to the Court to prove your debt, and proceed with such application with due diligence.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 187 \_\_\_\_\_.

Yours, &c.,

Name,  
Address,

(Trustee).

To \_\_\_\_\_.

## APPENDIX V.

### No. 127.

*Affidavit of computed Amount of estimated Assets or Composition.*

#### THE BANKRUPTCY ACT, 1869.

*Practice,*  
17p. 1383—4      In the London Bankruptcy Court [or the County Court of      holds  
at      ].  
In the matter of a special resolution for liquidation by arrangement of the  
affairs of *A. B.* of, &c. [or a composition arrangement between *A. B.* of,  
&c., and his creditors].  
I, *A. B.*, the above-named debtor [or the trustee or some person able to depose  
thereto] make oath and say as follows:  
That I verily believe (where a person other than the debtor deposes, add, after  
inquiry made by me and to the best of my knowledge, information, and belief),  
That the amount of assets [or composition] in this matter does not exceed  
£      .  
Sworn at, &c.

### No. 128.

*Præcipe on issuing Execution.*

*Practice,*  
17p. 1375—6.      Surrey, ff. fa., eligit or venditioni exponas [as the case may be] against *C. D.*  
for payment of £      , and £      costs [as the case may be] to *A. B.*,  
trustee of      [omit this if not applicable] on order of Court of Bankruptcy  
in London.  
Dated the      day of      , 187      .  
E. F. [attorney issuing the writ].  
Address and date.

### No. 129.

*Writ of Fieri Facias on an Order for Payment of Debt admitted in Court to  
be due to the Estate of a Bankrupt.*

*Practice,*  
17p. 1375—6.      In the London Bankruptcy Court.  
Victoria, by the grace of God, of the United Kingdom of Great Britain and  
Ireland, Queen, Defender of the Faith, to the sheriff of      , greeting:  
Whereas by an order of the Court, dated the      day of      , in the  
year of our Lord 18      , and made in the matter of [insert the title of the order],  
reciting that *C. D.* of      , in his examination taken the      day of      ,  
and signed and subscribed by him, had admitted that he was indebted  
to the said bankrupt in the sum of £      upon the balance of account between  
the said *C. D.* and the said bankrupt, it was ordered that the said *C. D.* should  
pay to *A. B.*, the trustee of the estate and effects of the said bankrupt in full  
discharge of the sum so admitted, the sum of £      forthwith [make this  
conformable to the order]: And whereas we are given to understand that the said  
sum of £      [or that the sum of £      , part of the said sum of £      ]  
is still unpaid: Now we command you that of the goods and chattels of the said  
*C. D.* in your bailiwick you cause to be made the said sum of £      [insert  
the sum to be levied], and that of the goods and chattels of the said *C. D.* in your  
bailiwick you further cause to be made interest upon the said sum of £      ,  
at the rate of £1 per centum per annum from the said date of the said order: And  
that you have that money and interest before the Court immediately after the  
execution hereof, to be paid to the said *A. B.*, trustee as aforesaid, in pursuance  
of the said order: And that you do all such things as by the statute you are  
authorised and required to do in his behalf: And in what manner you shall have  
executed this our writ make appear to our said Court immediately after the execu-  
tion thereof, and have there then this writ.

Given under the seal of the Court this      day of      , 187      .

## BANKRUPTCY FORMS.

### No. 130.

*Writ of Fieri Facias on an Order for Payment by Instalments of Debt admitted in Court to be due to the Estate of a Bankrupt.*

In the London Bankruptcy Court.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to the sheriff of \_\_\_\_\_, greeting: Whereas by an order of the Court, dated the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord, 18\_\_\_\_, made in the matter of [insert the title of the order], reciting that C. D. of \_\_\_\_\_, in his examination taken the \_\_\_\_\_ day of \_\_\_\_\_, and signed and subscribed by the said C. D. [or as the case may be], had admitted that he was indebted to the said bankrupt in the sum of £ \_\_\_\_\_ upon the balance of accounts between the said C. D. and the said bankrupt, it was ordered that the said C. D. should pay to A. B., the trustee of the estate and effects of the said bankrupt, in full discharge of the said sum of £ \_\_\_\_\_, the sum of £ \_\_\_\_\_, in manner following, that is to say, by instalments of £ \_\_\_\_\_ each, the first whereof was to be made on the \_\_\_\_\_ day of \_\_\_\_\_, and it was ordered that in default of payment of any of the said instalments the whole sum then remaining unpaid should immediately become payable and be paid: And whereas we are given to understand that default was made in payment of one of the said instalments, and thereupon the said sum of £ \_\_\_\_\_, which then remained unpaid [or the sum of £ \_\_\_\_\_ being the portion of the sum so ordered to be paid which then remained unpaid, according to the facts], immediately became payable, but the same has not been paid: Therefore we command you that of the goods and chattels of the said C. D. in your bailiwick, you cause to be made the said sum of £ \_\_\_\_\_ [insert here the sum to be levied], and that of the goods and chattels of the said C. D. in your bailiwick you further cause to be made interest [proceeding as in the former form].

*Practice,*  
pp. 1375—6.

### No. 131.

*Writ of Fieri Facias on an Order for Payment of Debts admitted in Court to be due to the Estate of a Bankrupt, and Costs assessed by the Court.*

In the London Bankruptcy Court.

Victoria, by the grace of God [as in the forms given above, reciting the order, including the portion of it relating to costs]: And whereas we are given to understand that the said sums of £ \_\_\_\_\_ and of £ \_\_\_\_\_ are still unpaid [make this agree with the facts]: Now we command you that of the goods and chattels of the said C. D. in your bailiwick, you cause to be made the said sums of £ \_\_\_\_\_ and £ \_\_\_\_\_ [proceed as in the above forms, with the necessary variations.]

*Practice,*  
pp. 1375—6.

### No. 132.

*Writ of Fieri Facias on an Order for Payment of Costs to be taxed.*

In the London Bankruptcy Court.

Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to the sheriff of \_\_\_\_\_, greeting: We command you that of the goods and chattels of C. D. in your bailiwick, you cause to be made the sum of £ \_\_\_\_\_ for certain costs which by an order made by our Court in the matter of [insert the title of the order], dated the \_\_\_\_\_ day of \_\_\_\_\_ were ordered to be paid by the said C. D. to A. B. trustee of the estate and effects of \_\_\_\_\_ [omit this if not applicable, and alter the form to suit the facts of the case], which costs have been since taxed at the said sum of £ \_\_\_\_\_ as appears by an allocatur dated the \_\_\_\_\_ day of \_\_\_\_\_, and that of the goods and chattels of the said C. D. in your bailiwick you further cause to be made interest at the rate of £4 per centum per annum, on the said sum from the said date of the said allocatur: And that you have that money and interest

*Practice,*  
pp. 1375—6.

## APPENDIX V.

before our Court immediately after the execution hereof, to be paid to the said *A. B.* in pursuance of the said order: And that you do all such things as by the statute you are authorised and required to do in this behalf: And in what manner you shall have executed this our writ make appear to our said Court immediately after the execution thereof.

Witness.

Given under the seal of the Court, this                      day of                      , 18 .

No. 133.

### *Writ of Venditioni Exponas.*

*Practice,*  
pp. 1375—6.

In the London Bankruptcy Court.

Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to the sheriff of                      greeting: Whereas by our writ we lately commanded you that of the goods and chattels of *C. D.* [*here recite the mandatory part of the fieri facias to the end*], and on the                      day of                      you returned to our said Court that by virtue of the said writ to you directed you had taken goods and chattels of the said *C. D.* to the value of the money and interest aforesaid, which said goods and chattels remained in your hands unsold for want of buyers [*to be varied according to the actual return*]: Therefore, we, being desirous that the said *A. B.* should be satisfied the money and interest aforesaid, command you that you expose to sale, and sell or cause to be sold the goods and chattels of the said *C. D.* by you in form aforesaid taken and every part thereof for the best price that can be gotten for the same, and have the money arising from such sale before our said Court immediately after the execution hereof, to be paid to the said *A. B.*, and have there then this writ.

Given under the seal of the Court this                      day of                      18 .

No. 134.

### *Writ of Elegit on an Order for Payment of a Debt admitted in Court to be due to the Estate of a Bankrupt.*

*Practice,*  
pp. 1375—6.

In the London Bankruptcy Court.

Victoria, &c. To the sheriff of                      , greeting: Whereas [*recite the order for payment, and that the money continues unpaid, as in the form of fieri facias, above given, and proceed*]: And afterwards the said *A. B.* came into our said Court, and, according to the form of the statute, in such case made and provided, chose to be delivered to him [*her or them, as the case may be*], all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick, as the said *C. D.* or any one in trust for him, was seised or possessed of on the                      day of                      [*the day on which the order was made*] or at any time afterwards, or over which the said *C. D.* on the said                      day of                      [*the day on which the order was made*], or at any time afterwards, had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns until the said sum of £                      shall have been levied: Therefore, we command you that without delay you cause to be delivered to the said *A. B.* by a reasonable price and extent all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough; and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold and customary tenure in your bailiwick, as the said *C. D.* or any

## BANKRUPTCY FORMS.

person in trust for him, was seised or possessed of on the said                      day of  
*[the day on which the order was made]*, or at any time afterwards, or over which  
the said *C. D.* on the said                      day of                      *[the day on which the order*  
*was made]*, or at any time afterwards, had any disposing power which he might,  
without the assent of any other person, exercise for his own benefit, to hold the  
said goods and chattels to the said *A. B.* as his proper goods and chattels, and  
also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments  
respectively, according to the nature and tenure thereof, to him and to his assigns  
until the said sum of £                      shall have been levied. And in what manner you  
shall have executed this our writ make appear to us in our Court aforesaid imme-  
diately after the execution thereof, under your seal and the seals of those by whose  
oath you shall make the said extent and appraisement.

And have you there then this writ.

Witness.

Given under the seal of the Court this                      day of                      , 18 .

No. 135.

*Writ of Elegit on an Order for Payment of Debt admitted in Court to be due to  
the Estate of a Bankrupt, and of Costs assessed by the Court.*

In the London Bankruptcy Court.

Victoria, &c., to the sheriff of                      , greeting: Whereas *[recite the order*  
*for payment, including the portion of it relating to costs, and that the monies are*  
*unpaid as before, and proceed]*: And afterwards the said *A. B.* came into our said  
Court, and, according to the form of the statute in such case made and provided,  
chose to be delivered to him all the goods and chattels of the said *C. D.* in your  
bailiwick, except his oxen and beasts of the plough; and also all such lands, tene-  
ments, rectories, tithes, rents, and hereditaments, including lands and heredita-  
ments of copyhold or customary tenure in your bailiwick as the said *C. D.*, or any  
one in trust for him, was seised or possessed of on the                      day of  
*[the day on which the order was made]*, or at any time afterwards, or over which  
the said *C. D.* on the said                      day of                      *[the day on which the order*  
*was made]*, or at any time afterwards, had any disposing power which he might,  
without the assent of any other person, exercise for his own benefit; to hold to  
him the said goods and chattels as his proper goods and chattels, and to hold the  
said lands, tenements, rectories, tithes, rents, and hereditaments respectively, ac-  
cording to the nature and tenure thereof, to him and to his assigns, until the said  
two several sums of £                      and £                      , together with interest upon the  
said sum of £                      at the rate of £4 per centum per annum from the  
day of                      *[the day on which the order was made]*, and on the said sum of  
£                      at the rate aforesaid, from the                      day of                      *[the date of*  
*the allocatur]* shall have been levied: Therefore, we command you that without  
delay you cause to be delivered to the said *A. B.* by a reasonable price and extent,  
all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and  
beasts of the plough; and also all such lands and tenements, rectories, tithes,  
rents, and hereditaments, including lands and hereditaments of copyhold or custo-  
mary tenure in your bailiwick, as the said *C. D.* or any person or persons in trust  
for him was or were seised or possessed of on the said                      day of  
*[the day on which the order was made]*, or at any time afterwards, or over which  
the said *C. D.* on the said                      day of                      *[the day on which the order*  
*was made]*, or at any time afterwards, had any disposing power which he might,  
without the assent of any other person, exercise for his own benefit; to hold the  
said goods and chattels to the said *A. B.* as his proper goods and chattels, and  
also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments  
respectively, according to the nature and tenure thereof, to him and to his assigns,  
until the two several sums of £                      and £                      , together with interest  
aforesaid, shall have been levied. And in what manner you shall have executed  
this our writ make appear to us in our Court aforesaid immediately after the  
execution thereof, under your seal and the seals of those by whose oath you shall  
make the said extent and appraisement. And have you there then this writ.

Given under the seal of the Court this                      day of                      , 18 .

*Practice,*  
pp. 1375—6.

## APPENDIX V

No. 136.

*Writ of Ekegit on an Order for Payment of Costs to be Taxed.*

Practice,  
pp. 1875-6.

**In the London Bankruptcy Court.**

Victoria, &c., to the sheriff of \_\_\_\_\_ greeting: Whereas lately, in our Court of Bankruptcy in a certain matter there depending, intituled "In the matter of *E. F.*," by an order of our said Court made in the said matter, and bearing date the \_\_\_\_\_ day of \_\_\_\_\_ it was ordered that *C. D.* should pay unto *A. B.* certain costs as in the said order mentioned, and which costs have been taxed and allowed by the Master of our said Court, at the sum of £ \_\_\_\_\_, as appears by the certificate of the said Master dated the \_\_\_\_\_ day of \_\_\_\_\_: And afterwards the said *A. B.* came into our said Court of Bankruptcy, and, according to the form of the statute in such case made and provided, chose to be delivered to him all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough, and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick, as the said *C. D.*, or any one in trust for him, was seised or possessed of on the \_\_\_\_\_ day of \_\_\_\_\_ [the date of the allocatur], or at any time afterwards, or over which the said *C. D.* on the said \_\_\_\_\_ day of \_\_\_\_\_ [the date of the allocatur], or at any time afterwards, had any disposing power, which he might, without the assent of any other person, exercise for his own benefit: to hold to him the said goods and chattels, as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said sum of £ \_\_\_\_\_, together with interest thereon at the rate [of] £4 per centum per annum, from the said \_\_\_\_\_ day of \_\_\_\_\_ [the date of the Master's certificate of taxation] shall have been levied: Therefore, we command you that without delay you cause to be delivered to the said *A. B.*, by a reasonable price and extent, all the goods and chattels of the said *C. D.* in your bailiwick, except his oxen and beasts of the plough; and also all such lands and tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick, as the said *C. D.* or any person or persons in trust for him was or were seised or possessed of on the said \_\_\_\_\_ day of \_\_\_\_\_ [the date of the allocatur], or at any time afterwards, or over which the said *C. D.* on the said day or at any time afterwards had any disposing power, which he might, without the assent of any other person or persons, exercise for his own benefit: to hold the said goods and chattels to the said *A. B.* as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said sum of £ \_\_\_\_\_, together with interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us in our Court of Bankruptcy aforesaid, immediately after the execution thereof, under your seal, and the seals of those by whose oath you shall make the said extent and appraisement. And have there then this writ.

Witness.

HATHERLEY, C.  
JAMES BACON,  
Chief Judge in Bankruptcy.

1st January, 1870.

# GENERAL RULES, 1871.

## SCHEDULE OF FORMS.

### 1. Notice to Trustee at instance of Comptroller.

Sect. 57.  
Practice,  
p. 1387.

#### THE BANKRUPTCY ACT, 1869.

In the County Court of                      holden at  
In the matter of *A. B.* of                      , a bankrupt.  
Take notice that you are required to attend at this Court on the                      day  
of                      , at                      o'clock in the                      noon, to explain why you have  
failed to comply with the requisition of the Comptroller in Bankruptcy, mentioned  
in a report of that Officer to this Court, a copy of which is hereto annexed.  
Take further notice that, should you not attend on that day, the Court will,  
in your absence, make such order in the premises, as it may think just.  
Dated this                      day of                      , 187                      .

Registrar.

### 2. Order of Discharge.

#### THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of                      holden  
at                      ].  
In the matter of *A. B.* of                      , a bankrupt.  
An order of discharge was this day granted to *A. B.* of                      , who was Rule 139,  
adjudicated bankrupt on the                      day of                      187                      . 1870.  
Dated this                      day of                      , 187                      . Practice,  
Registrar. p. 1400.

### 3. Notice in Gazette of Dividend declared.

In the London Bankruptcy Court [or the County Court of                      holden Rule 132,  
at                      ]. 1870.  
A                      dividend of                      shillings in the pound has been declared in the Practice,  
matter of *A. B.* of                      , adjudicated bankrupt on the                      day of                      , p. 1395.  
and will be paid by me at (*here set out fully the place where the dividend will*  
*be paid*) on and after the                      day of                      , 187                      .  
Dated this                      day of                      , 187                      .

Trustee.

## APPENDIX V.

#### 4. Form of Affidavit on Nomination of Receiver by Creditors.

**THE BANKRUPTCY ACT, 1869.**

*Practice,* In the London Court of Bankruptcy [or in the County Court of  
*pp. 1 15-16.* holden at ].

In the matter of proceedings for liquidation by arrangement or composition with creditors instituted by *A. B.* of \_\_\_\_\_, &c.

Rule 262,  
1870.

1. I am (or a partner in the firm of \_\_\_\_\_, which firm is) one of the three principal creditors of the above-named *A. B.*, who have nominated *C. D.* as Receiver (or Manager) of the property (and business) of the said *A. B.*

2. I verily believe the said *C. D.* has been duly nominated as such Receiver (or Manager) by a majority in value of the creditors of the said *A. B.*, in pursuance of Rule 262 of the Bankruptcy Rules, 1870.

Sworn, &c.

*Practice,*  
pp. 1380-89.

Order for Payment,  
No. \_\_\_\_\_

### 5. Order for Payment of Moneys out of Bank of England.

THE BANKRUPTCY ACT, 1869.

**Re :**  
**Adjudication dated**

In the London Bankruptcy Court [or the County Court of  
holden at                      ],                      day of                      , 18 .

In the matter of \_\_\_\_\_, of \_\_\_\_\_, a bankrupt.  
(Under adjudication dated \_\_\_\_\_ 18 \_\_\_\_.)

It appearing to the Court that \_\_\_\_\_ is entitled to be paid the sum of \_\_\_\_\_ pounds \_\_\_\_\_ shillings and \_\_\_\_\_ pence, being \_\_\_\_\_, and that the said sum forms part of the moneys standing to the credit of the account of the Accountant in Bankruptcy to the credit of the account of the Accountant in Bankruptcy in the Bank of England. It is ordered, that the said sum be paid to \_\_\_\_\_.

By the Court,  
(L.S.) Registrar.

£

Order for { In pursuance of the above Order pay to  
Payment. { or order, the sum of pounds  
shillings and pence.

£        „        „

**Accountant**

To the Cashier of the Bank  
of England.

N.B.—This Order, upon being properly endorsed, will be paid at the Public Drawing Office, Bank of England, any day until three o'clock.

### 6. Certificate of no Receipts or Payments by Trustee.

THE BANKRUPTCY ACT, 1869.

**Practice,  
1386.**

In the London Bankruptcy Court [or the County Court of \_\_\_\_\_] at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

In the matter of \_\_\_\_\_, of \_\_\_\_\_, a bankrupt.  
I, \_\_\_\_\_ of \_\_\_\_\_, the trustee of the property of the above-named bank-  
rupt, certify that since "the date of my appointment" or "the last audit of my



## BANKRUPTCY FORMS.

accounts," *as the case may be*], as trustee I have not, nor has any person by my order or for my use, received or paid any sum of money on account of the bankrupt's estate.

And I further certify that the reason why I have not received any sum of money on account of the said estate since the time aforesaid, is [*here state reason.*]

Examined and approved this                      day of                      18                      .  
Trustee.

} Committee of Inspection.

### 7. *Affidavit of no Receipts or Payments by Trustee in Cases where there is no Committee of Inspection.*

#### THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of                      holden *Practice,*  
p. 1387.  
at                      ].

In the matter of                      , of                      , a bankrupt.  
 I,                      of                      , the trustee of the property of the above-named bankrupt, make oath and say:—

1. That since ["the date of my appointment" or "the last audit of my accounts," *as the case may be*], as trustee I have not, nor has any person by my order or for my use, received or paid any sum of money on account of the bankrupt's estate.

2. That the reason why I have not received any sum of money on account of the said estate since the time aforesaid is [*here state reason.*].

Sworn at, &c.

No. 137.

### *Particulars of Demand and Notice requiring Payment.*

#### THE BANKRUPTCY ACT, 1869.

The following are the particulars of the demand of the undersigned [the full christian and surname of the creditor, and (if there be several creditors, not in partnership), of each creditor; and the description, residence, or place of business of each. If the debt be claimed by a partnership, the name of each partner, and the style of the firm, and its description and place of business], of                      , against you [the full christian and surname of the debtor (*or where the christian name is not known, the surname only*), (*or when the christian name is indicated only by any initial or contraction, then such initial letter or letters, or contraction of the supposed christian name and the surname*), and also the place of residence, or of business, as the case may be. Where the debt is claimed from a partnership, the full name, or names (as above indicated) of the partners (when known) and the style or firm, and the place of business], amounting to the sum of pounds [the amount of the debt, and the nature of the consideration must be given with reasonable and convenient certainty, as to the dates and all other matters. If there be any set-off, the amount must be set forth, and credited in the account, and the creditor must require payment of the difference or balance only]. *Practice,*  
p. 1293.

Take notice, that                      the said                      hereby require immediate payment of the said sum of                      pounds.

Dated this                      day of                      in the year of our Lord one thousand eight hundred and seventy                      .

[Where the debt is claimed to be due to several persons not in partnership, the particulars must be signed in the christian name and surname of every such person. Where the debt is claimed to be due to a partnership firm, the particulars must be signed by one of the partners, on behalf of himself and partner or

## APPENDIX V.

partners, adding after such signature the style or firm of partnership and place of business, as "*John Thompson for self and partners trading under the style or firm of* , at in the of .]  
To the said

No. 138.

*Affidavit as to Election of Chairman at Meeting of Creditors.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
p. 1342 and  
p. 1432.

In the London Bankruptcy Court [or the County Court of , holden at ].

In the matter of proceedings for liquidation by arrangement or composition with creditors instituted by of , of , make oath and say as follows:—

That I was present at the meeting of creditors duly convened in this matter and held on the day of , 187 , at which meeting of was duly elected chairman by a majority [for first meeting, of persons present thereat claiming to be or to represent creditors of the said ]. [For subsequent meeting, in value of the creditors present or represented thereat who have proved their debts.]

Sworn at this day of one thousand eight hundred and seventy

Before me,  
Exhibited to me, this day of , 187 .

No. 139.

*Notice in Gazette of the Appointment of Trustee under Liquidation.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
pp. 1433—4.

In the London Bankruptcy Court [or the County Court of , holden at ].

In the matter of proceedings for liquidation by arrangement or composition with creditors, instituted by of , of has been appointed trustee of the property of the debtor

All persons having in their possession any of the effects of the debtor must deliver them to the trustee, and all debts due to the debtor must be paid to the trustee.

Creditors who have not yet proved their debt, must forward their proofs of debts to the trustee.

Dated this day of , 187 .

Registrar.

No. 140.

*Restraining Action, &c., under Liquidation.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
p. 1428 et seq.

In the London Bankruptcy Court [or the County Court of , holden at ].

In the matter of proceedings for liquidation by arrangement or composition with creditors instituted by of .

Before [when application is made to the London Bankruptcy Court, "Mr. Registrar sitting as Chief Judge"], upon the application of and upon reading affidavit, it is ordered that of shall

# BANKRUPTCY FORMS.

be restrained from taking any further proceedings in the action [or suit] brought by him [or upon the judgment [or decree] recovered or obtained by him] against the said in [here state the Court in which proceedings are] [or it is ordered that the proceedings in the action [or suit] brought by him against the said in [here state the Court in which proceedings are] may be proceeded with on [here insert the terms fixed by the Court].

The said [here insert name of applicant] by his [counsel or attorney] undertaking to abide by any order the Court may hereafter think fit to make as to damages in case the Court shall be of opinion that the said [here insert names of creditors restrained] shall have sustained any by reason of this order which the said [here insert name of applicant] ought to pay.

Given under the seal of the Court this day of , 187 .  
By the Court, Registrar.

No. 140 a.

*Affidavit in Support of Application for Restraining Order under Liquidation.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or the County Court of , holden at Practice, p. 1428 et seq.

In the matter of proceedings for liquidation by arrangement or composition with creditors instituted by

I, the above-named of in the county of , make oath and say as follows:—

1. That a petition for liquidation by arrangement with my creditors was on the day of , 187 , presented by me to this Honourable Court, and the first meeting is appointed to be held on the day of , 187 .

2. That I carry on the trade and business of a at the address above-mentioned, that my assets consist of [here set out nature of assets and the estimated value], and it is requisite and necessary that a receiver should be appointed to protect the same on behalf of the general body of my creditors.

3. That the action and proceedings referred to, in the following list or schedule, have been brought against me, and are still pending, viz.:—

Names and Addresses of plaintiff, or persons sought to be restrained.	Court in which proceedings have been taken.	Nature and position of proceedings sued for or recovered.	Amount.

4. That it is desirable that this Honourable Court should restrain the persons named in the said schedule from proceeding further in the action brought or judgment recovered by

Sworn at in the of , this day of 187 .

Before me,

## APPENDIX V.

No. 141.

### *Application under Liquidation.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
p. 1443.      In the London Bankruptcy Court [or the County Court of      **holden**  
at      ].  
In the matter of proceedings by arrangement or composition with creditors  
instituted by      of      .  
Application is made      .

No. 142.

### *Affidavit as to Posting Notices to Creditors.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
pp. 1427—8.      In the London Bankruptcy Court [or the County Court of      , **holden**  
at      ].  
In the matter of      , of      .  
I,      of      , make oath and say that I did, on the      day of      , 187      , send, post paid, by her Majesty's post, a copy of the notice hereunto annexed marked A, to each and every of the creditors mentioned in the list hereunto annexed, marked B, and that such notices were respectively addressed to the said creditors by the descriptions mentioned in the said list, and were posted at the post-office situate      , in the      of      , before the hour of      o'clock in the      noon on the said day.  
Sworn at      , this      day of      , 187      .  
Before me,  
Exhibited to me this      day of      , 187      .  
Registrar.

No. 143.

### *Notice of Application to Register Resolutions where Proof objected to.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
p. 1440 et seq.      In the London Bankruptcy Court [or the County Court of      , **holden**  
at      ].  
In the matter of proceedings for liquidation by arrangement or composition with creditors instituted by      .  
Take notice that an application will be made to the registrar at the London Bankruptcy Court, Lincoln's Inn, in the county of Middlesex, or the Court-house in      , on      next the      day of      , 187      at      o'clock in the      noon, to register the resolution passed at a general meeting of creditors held at      on the      day of      , 187      , in the above matter, and that you must then attend and support your objection to the proof of debt of      [or your proof of debt, the same having been objected to by      , as the case may be].

No. 144.

### *Notice of Application to Register Resolution.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
p. 1440 et seq.      In the London Bankruptcy Court [or the County Court of      , **holden**  
at      ].  
In the matter of proceedings for liquidation by arrangement or composition with creditors, instituted by      .  
Take notice that an application will be made to the registrar at the Lon-

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don Bankruptcy Court, Lincoln's Inn, in the county of Middlesex, or the Court-house in , on the day of , 187 , at o'clock in the noon to register the resolution passed at a general meeting of creditors held at , on the day of , 187 , in the above matter, and that if you have any objection to the registration of such resolution you must attend and urge the same.

No. 145.

*Affidavit that Vote of Creditor, absent from Meeting, had not affected Resolution.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court.

In the matter of proceedings for liquidation by arrangement or composition with creditors, instituted by , *Practice, p. 1440 et seq.*  
I, , make oath and say that had , respectively creditors of the said debtor, been present at the general meeting held in this matter on the day of , 187 , and voted against the resolution then passed, the statutory majority in number and value necessary for the passing of such resolution would not have been affected thereby.

Sworn at , this day of , 187 .  
Before me,

No. 146.

*Notice of Motion.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or, the County Court of , holden at , *Practice, p. 1309 et seq.*

In the matter of

Take notice that this Honourable Court will be moved on , the day of , 187 , at o'clock in the noon, on behalf of , for an order that the injunction granted by the Court on the day of restraining you from taking any further proceedings in the action brought by you against the said , or upon the judgment recovered or execution issued therein, may be continued until the further order of the Court. And further take notice that the affidavit of , cop of which served herewith, will be read in support of such motion.

Dated this day of , 187 .  
Solicitor for

To

No. 147.

*Affidavit of Service of Notice of Motion.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or, the County Court of , holden at , *Practice, p. 1309 et seq.*

In the matter of

I, , make oath and say that I did on the day of , 187 , serve with the notice of motion, a true copy whereof is hereunto annexed marked with the letter "A" together with cop of the affidavit of intended to be used in support of such motion, by leaving such notice of motion and cop of the affidavit with

Sworn at , this day of , 187 .  
Before me,

## APPENDIX V.

No. 148.

### *List of Registered Letters.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
p. 1265.

In the London Bankruptcy Court [or, the County Court of \_\_\_\_\_], holden at \_\_\_\_\_.  
In the matter of proceedings for liquidation by arrangement or composition with creditors, instituted by \_\_\_\_\_ of \_\_\_\_\_.

### LIST OF REGISTERED LETTERS.

No.	Names of Creditors.	Address.

No. 149.

### *Affidavit as to Trading.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
pp. 1301—2.

In the London Bankruptcy Court [or, the County Court of \_\_\_\_\_], holden at \_\_\_\_\_.  
In the matter of \_\_\_\_\_ against whom a bankruptcy petition was filed on the \_\_\_\_\_ day of \_\_\_\_\_, 187\_\_\_\_.  
I, \_\_\_\_\_, of \_\_\_\_\_, make oath and say that I have known the said \_\_\_\_\_ for the space of \_\_\_\_\_ now last past, during all which time the said \_\_\_\_\_ did use and exercise the trade and business of \_\_\_\_\_ at \_\_\_\_\_ aforesaid, and sought and endeavoured to get \_\_\_\_\_ his livelihood thereby, as others of the same trade or business usually do.

Sworn at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 187\_\_\_\_.

Before me, \_\_\_\_\_ day of \_\_\_\_\_, 187\_\_\_\_.  
Exhibited to me, this \_\_\_\_\_

Registrar.

No. 150.

### *Affidavit as to Petitioning Creditor's Debt.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
pp. 1301—2.

\_\_\_\_\_ day of \_\_\_\_\_, 187\_\_\_\_.  
In the matter of \_\_\_\_\_, against whom a petition for adjudication of bankruptcy was filed on the \_\_\_\_\_ day of \_\_\_\_\_, 187\_\_\_\_.  
I, \_\_\_\_\_, of \_\_\_\_\_, make oath and say, that the said \_\_\_\_\_ was on and before the \_\_\_\_\_ day of \_\_\_\_\_ and still justly and truly indebted unto this deponent, in the sum of \_\_\_\_\_, for [state consideration], for which said sum or any part thereof I say that I have not, nor hath any person by my

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order or to my knowledge and belief for use had or received any manner of satisfaction or security whatsoever, save and except the following [*here state nature of security, and the value at which the creditor estimates the same, and if bills of Exchange, set them out in the schedule; but if no security be held, strike out from the word "whatsoever."*]

Date.	Drawn.	Acceptor.	Amount.	Date when due.

Sworn at , this day of , 187 .  
 Before me,  
 Exhibited to me, this day of , 187 .

Registrar.

No. 151.

*Affidavit as to Act of Bankruptcy by Declaration of Inability to Pay.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court, day of , 187 .  
 In the matter of , against whom a petition for adjudication of bank-  
 ruptcy was filed on the day of , 187 , I, , of  
 , make oath and say, that the named in the annexed certified copy  
 of declaration of inability to pay, and therein described as , the original of  
 which declaration was filed in the office of the chief registrar of the London Bank-  
 ruptcy Court, on the day of , 187 , the same person  
 as the named in the said petition, and that the said declaration, of which  
 the annexed is a certified copy, was signed by the said in the presence of  
 and attested by this deponent, and was filed as aforesaid before the said petition  
 was presented.

*Practice,*  
*pp. 1301—2.*

Sworn at this day of , 187 .  
 Before me,  
 Exhibited to me, this day of , 187 .

Registrar.

No. 152.

*Bankrupt's Summons.*

THE BANKRUPTCY ACT, 1869.

Whereas a petition for adjudication of bankruptcy was filed in the London  
 Bankruptcy Court, on the day of , 187 , against you, ,  
 and you having been duly adjudged bankrupt, and the first meeting of your  
 creditors having been duly held, you are hereby summoned and required to sur-  
 render yourself to the said Court, at a public sitting of the Court, appointed to be  
 held on the day of , 187 , at o'clock in the  
 noon precisely, at the said Court in Lincoln's Inn Fields, for you the said bank-

*Practice,*  
*pp. 1304—5.*

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rupt to attend for public examination, and you are hereby informed that at said sitting you will be required to submit yourself to be examined, and to make a full and true discovery and disclosure of all your estate and effects, according to the directions of the said statute. And herein fail not at your peril.

Given under my hand and under the seal of the Court this       day of       ,  
187 .  
To       , the above-named bankrupt.

Registrar.

No. 153.

### *First Meeting.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
p. 1349.

In the London Bankruptcy Court [or, the County Court of       , holden  
at       ], day of       , 187 .  
Before Mr. Registrar       ,  
In the bankruptcy of       .

MEMORANDUM.—This being the day appointed by the Court for the first meeting of creditors under the said bankruptcy, whereof the notice required in that behalf has been duly given, I, the undersigned, a registrar of the said Court, sat at the time and place above-mentioned pursuant to such notice, to take the proof of debts, and for the appointment of a trustee or trustees under the said bankruptcy, and       creditor having proved and       trustee having been duly appointed the       day of       , at       o'clock in the noon, was appointed by the Court for the said bankrupt to attend for public examination before the Chief Judge in bankruptcy.

Registrar.

No. 154.

### *Debtor's Consent to Adjudication.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
p. 1321.

In the London Bankruptcy Court [or, the County Court of       , holden at       ].

In the matter of a bankruptcy petition filed the       day of       ,  
187 , by       against       .  
I,       of       , the person named in the above-mentioned petition, do hereby consent to an adjudication being forthwith made against me under the said petition.

Dated this       day of       , 187 .

Witness,       .

No. 155.

### *Examination Heading.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
pp. 1391—2.

In the London Bankruptcy Court [or, the County Court of       , holden at       ].

day of       , 187 .

In the matter of       .  
Before Mr.       , being sworn and examined at the time and place  
above-mentioned upon his oath saith.



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No. 156.

### *Adjourned Examination.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court,                      day of                      , 187 .  
 In the bankruptcy of                      .  
 Before the Chief Judge.

*Practice,*  
*pp. 1391-2.*

This being a public sitting appointed for the above-named bankrupt to pass  
 h public examination (whereof and of the purport whereof the notice required  
 in that behalf has been duly given), and the said bankrupt having come before  
 this Court, being the Court duly authorized to proceed in the prosecution of the  
 said bankruptcy, and the said bankrupt being examined at the time and place  
 above-mentioned. Now upon hearing Mr.                      for the said bankrupt and  
 Mr.                      for the trustee.

And it appearing that

The Court doth order that this sitting for the said bankrupt to pass h said  
 examination be adjourned until the                      day of                      next, at  
 o'clock in the                      noon precisely.

By the Court,  
 Registrar.



No. 157.

### *Common Order.*

THE BANKRUPTCY ACT, 1869.

In the                      day of                      , 187 .  
 In the matter of                      .  
 Before Mr.                      .  
 Upon the application of                      .  
 It is ordered.

*Practice,*  
*p. 1310.*

No. 158.

### *List of Creditors who have Proved Debts.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court                      day of                      , 187 .  
 In the matter of                      .  
 Before Mr. Registrar                      .

*Practice,*  
*pp. 1367-8.*

LIST OF CREDITORS WHO HAVE THIS DAY PROVED THEIR DEBTS.		
Names of Creditors.	Amount.	

## APPENDIX V.

No. 159.

### *Adjournment of Debtor's Summons.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
*pp. 1296-9.*

In the London Bankruptcy Court [or, the County Court of \_\_\_\_\_], holden at \_\_\_\_\_.

In the matter of a debtor's summons by \_\_\_\_\_ against \_\_\_\_\_ of \_\_\_\_\_ and bearing date the \_\_\_\_\_ day of \_\_\_\_\_ 187 \_\_\_\_\_.

Before Mr. Registrar \_\_\_\_\_.

This being the day appointed by the Court for the hearing of an application by the debtor to dismiss the above-mentioned summons.

Now upon hearing Mr. \_\_\_\_\_ for \_\_\_\_\_ and Mr. \_\_\_\_\_ for \_\_\_\_\_ it is ordered that the further hearing of the said application be, and the same is hereby adjourned until the \_\_\_\_\_ day of \_\_\_\_\_ 187 \_\_\_\_\_ at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon.

Given under the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_  
By the Court, \_\_\_\_\_  
Registrar.

No. 160.

### *Certificate of not having Received or Paid.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
*p. 1384 et seq.*

In the London Bankruptcy Court [or, the County Court of \_\_\_\_\_], holden at \_\_\_\_\_.

In the matter of \_\_\_\_\_ bankrupt.  
day of \_\_\_\_\_ 187 \_\_\_\_\_.

I hereby certify that I have not received or paid any monies on account of the above estate.

Examined and approved \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 187 \_\_\_\_\_  
Inspectors. \_\_\_\_\_ Trustee.

No. 160a.

### *Form of Application for Proofs off File.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
*p. 1358 et seq.*

In the London Bankruptcy Court [or, the County Court of \_\_\_\_\_], holden at \_\_\_\_\_.

In the matter of proceedings for liquidation by arrangement with creditors, instituted by \_\_\_\_\_, of \_\_\_\_\_.

To  
SIR,

In view of Rule 71 of the Bankruptcy Act, 1869, and for the purpose of examining, in accordance with Rule 72, the proofs of debt that have been filed in the Court against the estate of the above debtor, I shall be obliged by your causing to be delivered to me with as little delay as possible the said proofs, on my engaging, which I hereby do, to return

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them to you after due examination, and to pay any charge attending their delivery and return.

I am, Sir, Your obedient servant,

**Trustee of the estate and effects of  
the above-named debtor.**

No.	Name of Deponent.	Amount of Debt.		
		£	s.	d.

**No. 161.**

*Order for Substituted Service of Petition.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or, the County Court of \_\_\_\_\_, holden at \_\_\_\_\_]. *Practice*,  
In the matter of a petition for adjudication of bankruptcy filed by \_\_\_\_\_, pp. 1303—4.  
against \_\_\_\_\_.

**Before Mr.**

Upon the application of \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_, of \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_, it is ordered that the delivery of a sealed copy of the above-mentioned petition, together with a sealed copy of this order on some adult inmate at the usual or last known place of business of the said \_\_\_\_\_ situate and being at \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_ shall be deemed to be good and sufficient service of the said petition on the said \_\_\_\_\_ on the \_\_\_\_\_ day of such delivery.

Given under the seal of the Court this                      day of                      187 .  
Registrar.

**No. 162.**

*Order for Substituted Service of Debtor's Summons.*

**THE BANKRUPTCY ACT, 1869.**

In the London Bankruptcy Court [*or, the County Court of* \_\_\_\_\_], holden at \_\_\_\_\_ *Practice,*  
[\_\_\_\_\_] p. 1294.

In the matter of a debtor's summons by                  against

**Before Mr.**

Upon the application of \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ of \_\_\_\_\_, in the \_\_\_\_\_ of \_\_\_\_\_, it is ordered that the delivery of a sealed copy of the above-mentioned debtor's summons, together with a sealed copy of this order on some adult inmate at the usual or last known place of business of the said \_\_\_\_\_ situate and being at \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_ shall be deemed to be good and sufficient service of the said debtor's summons on the said \_\_\_\_\_ on the day of such delivery.

Given under the seal of the Court this                      day of                      187 .  
Registrar.

No. 163.

**Affidavit of Fitness of Receiver or Manager.**

**THE BANKRUPTCY ACT, 1869.**

**In the London Bankruptcy Court [or, the County Court of \_\_\_\_\_, holden at \_\_\_\_\_]  
In the matter of a petition for adjudication of bankruptcy filed by \_\_\_\_\_** } *Practice,*  
 } *p. 1315.*

# APPENDIX V.

against \_\_\_\_\_, or, proceedings for liquidation by arrangement or co-  
position with creditors, instituted by \_\_\_\_\_  
I, \_\_\_\_\_ of \_\_\_\_\_ make oath and say that I know and am well acquainted  
with \_\_\_\_\_ of \_\_\_\_\_, the person proposed to be appointed receiver (add as  
manager, if so appointed) of this estate, and have known him for the space  
\_\_\_\_\_ now last past, and am of opinion that he is a highly respectable and  
responsible person, and well fitted to act in the capacity of receiver in bankruptcy  
or in any other position of trust, and in every respect competent to discharge his  
duties consequent upon his appointment to any such office.  
Sworn at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 187 \_\_\_\_\_.  
Before me \_\_\_\_\_  
Exhibited to me this \_\_\_\_\_ day of \_\_\_\_\_ 187 \_\_\_\_\_.  
No. 164.

*Seal of the Court.*

In the London Bankruptcy Court [or, the County Court of \_\_\_\_\_] holden at \_\_\_\_\_  
In the matter of \_\_\_\_\_

## SUMMARY OF RECEIPTS AND PAYMENTS.

Receipts.			Payments.		
	£	s. d.		£	s. d.
Balance from last Account (if any) . . . . .			Secured Creditors to enable Trustee to realize property in their possession for benefit of Estate . . . . .		
Cash . . . . .			Preferential — such as Rent, Taxes, Wages, due at date of Bankruptcy, see secs. 32 & 33 . . . . .		
Debts . . . . .			Law charges paid as taxed . . . . .		
Stock . . . . .			Court Fees . . . . .		
Furniture . . . . .			Bankrupt's Allowance . . . . .		
Other Property . . . . .			Extraordinary Outlay — such as Rents and Wages incurred in management, after Bankruptcy, or for materials required to complete contracts, &c. . . . .		
			Trustee's Remuneration . . . . .		
			Incidental Outlay . . . . .		
			Dividends paid . . . . .		
			Do. Unclaimed £ . . . . .		
			Balance . . . . .		
	£			£	
To Balance, viz.:					
In Bank . . . . .	£	:			
With Trustee . . . . .	£	:			
	£	:			

# BANKRUPTCY FORMS.

No. 165.

*Order for Substituted Service of Petition by Advertisement.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or, the County Court of \_\_\_\_\_], holden at \_\_\_\_\_, Practice, pp. 1303—4.  
 In the matter of a bankruptcy petition by \_\_\_\_\_ against \_\_\_\_\_  
 Before Mr. Registrar  
 Upon the application of \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed  
 the \_\_\_\_\_ day of \_\_\_\_\_ 187 \_\_\_\_\_.  
 It is ordered that notice of the filing of the above-mentioned petition, according to the form in the schedule, be published in the *London Gazette* and [insert name of newspaper] and that the publication of such notice shall be deemed to be service of such petition on the said \_\_\_\_\_.  
 Given under the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_ 187 \_\_\_\_\_.  
 Registrar.

No. 166.

*Order for Substituted Service of Debtor's Summons by Advertisement.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or, the County Court of \_\_\_\_\_], holden at \_\_\_\_\_, Practice, p. 1294.  
 In the matter of a debtor's summons by \_\_\_\_\_ against \_\_\_\_\_  
 Before Mr. Registrar  
 Upon the application of \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed  
 the \_\_\_\_\_ day of \_\_\_\_\_ 187 \_\_\_\_\_, it is ordered that notice of the granting of the above-mentioned summons, according to the form in the schedule, be published in the *London Gazette* and in [insert name of newspaper] and that the publication of such notice shall be deemed to be service of such summons on the said \_\_\_\_\_ on the seventh day after such publication.  
 Given under the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_ 187 \_\_\_\_\_.  
 Registrar.

No. 167.

1s. *Affidavit of Search.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or, the County Court of \_\_\_\_\_], holden at \_\_\_\_\_, Practice, pp. 1300 and 1301.  
 In the matter of a bankruptcy petition by \_\_\_\_\_ against \_\_\_\_\_  
 I, \_\_\_\_\_ of \_\_\_\_\_, make oath and say that I have this day searched the proceedings filed in this Court under a debtor's summons by \_\_\_\_\_ against \_\_\_\_\_, and bearing date the \_\_\_\_\_ day of \_\_\_\_\_, and as appears by such proceedings the said \_\_\_\_\_ has not filed any affidavit denying the debt due to the said \_\_\_\_\_ upon which such summons was issued, and no application has been made by the said \_\_\_\_\_ to dismiss the said summons.  
 Sworn at \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 187 \_\_\_\_\_.  
 Before me  
 Exhibited to me, this \_\_\_\_\_ day of \_\_\_\_\_ 187 \_\_\_\_\_.  
 Registrar.

## APPENDIX V.

No. 168.

1s.

*Affidavit of no separate Debts or Estate.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
*pp. 1372*  
*et seq.*

In the London Bankruptcy Court [or, the County Court of \_\_\_\_\_], holden at \_\_\_\_\_.

In the matter of proceedings for liquidation by arrangement or composition with creditors, instituted by \_\_\_\_\_, of \_\_\_\_\_.

We, \_\_\_\_\_, of \_\_\_\_\_, make oath and say that we have not any separate debt or debts due by us or either of us to any person or persons whatsoever;

And we further make oath and say that neither of us have any separate estate or effects of any kind whatever belonging to either of us.

Sworn at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 187 \_\_\_\_.

Before me, \_\_\_\_\_.

No. 169.

*Affidavit verifying Charges.*

*Practice,*  
*p. 1384 and*  
*pp. 1410-11.*

In the London Bankruptcy Court [or, the County Court of \_\_\_\_\_], holden at \_\_\_\_\_.

In the matter of \_\_\_\_\_, maketh oath and saith that he was appointed as or about the \_\_\_\_\_ day of \_\_\_\_\_, 187 \_\_\_\_, receiver [manager, or trustee].

And this deponent saith that the bill of charges hereto annexed marked with the letter \_\_\_\_\_ and amounting to the sum of £ \_\_\_\_\_ contains a true statement of the days and times during which this deponent was personally engaged accounts and explanations required concerning the same. And this deponent saith that he was actually and necessarily employed during the whole of the time so charged in and about the business of the said \_\_\_\_\_.

And deponent further saith the said bill of charges contains also a like true statement to the best of this deponent's knowledge and belief of the days and times during which the deponent's clerks were employed upon the said accounts \_\_\_\_\_, and that they were necessarily so employed during the whole period charged.

And this deponent further saith that he hath received on account of his charges for the business so transacted by this deponent for the said \_\_\_\_\_, and so more. And this deponent saith that he hath not nor hath any other person by this deponent's order or to his knowledge or belief for his use received any other security or satisfaction whatever for or on account of his aforesaid charges.

Sworn at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 187 \_\_\_\_.

Before me, \_\_\_\_\_.

No. 170.

*Certificate by Trustee that he has not received any Remuneration.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
*pp. 1366-7.*

In the London Bankruptcy Court [or, the County Court of \_\_\_\_\_], holden at \_\_\_\_\_.

In the matter of \_\_\_\_\_, I, \_\_\_\_\_, of \_\_\_\_\_, the trustee, hereby certify that I have not received, neither do I intend to receive any remuneration for my services in this matter as trustee.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 187 \_\_\_\_.

Witness,

## BANKRUPTCY FORMS.

No. 171.

*Certificate by Trustee as to Charges.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or, the County Court of \_\_\_\_\_], holden at \_\_\_\_\_, *Practice, pp. 1300—7.*  
In the matter of \_\_\_\_\_  
I hereby certify that the bill of costs hereunto annexed does not contain any charge for work done for which I claim any remuneration.  
Dated this \_\_\_\_\_ day of \_\_\_\_\_, 187 \_\_\_\_.  
Witness, \_\_\_\_\_

No. 172.

*Notice of Application to dismiss Debtor's Summons.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or, the County Court of \_\_\_\_\_], holden at \_\_\_\_\_, day of \_\_\_\_\_, 187 \_\_\_\_\_. *Practice, pp. 1297 et seq.*  
In the matter of a debtor's summons by \_\_\_\_\_ against \_\_\_\_\_  
Take notice that the Court has appointed the \_\_\_\_\_ day of \_\_\_\_\_, 187 \_\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, at the \_\_\_\_\_, before \_\_\_\_\_, for the hearing of an application by the said debtor that the said summons may be dismissed.  
\_\_\_\_\_  
To \_\_\_\_\_ Registrar.

No. 173.

*Request for Proceedings.*

In the London Bankruptcy Court [or, the County Court of \_\_\_\_\_], holden at \_\_\_\_\_, *Practice, pp. 1390 et seq.*  
In the matter of proceedings for liquidation by arrangement or composition with creditors, instituted by \_\_\_\_\_ of \_\_\_\_\_  
No. \_\_\_\_\_  
I, being the attorney in the above matter, hereby make application for the file of documents to be delivered to me under Rule 9 of "The Bankruptcy Act, 1869," for the purposes of a [insert here second or adjourned, &c., as the case may be] meeting to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 187 \_\_\_\_\_, and I hereby undertake to return them to the Office for Registration of Arrangement Proceedings, 2, Quality Court, in the same condition as received by me without any delay.  
Received from the Office for Registration of Arrangement Proceedings, the \_\_\_\_\_ above file.  
Dated \_\_\_\_\_, 187 \_\_\_\_\_.

174.

*Notice of Dividend under Liquidation.*

THE BANKRUPTCY ACT, 1869.

In the London Bankruptcy Court [or, the County Court of \_\_\_\_\_], holden at \_\_\_\_\_, *Practice, p. 1440.*  
A \_\_\_\_\_ dividend of \_\_\_\_\_ in the pound has been declared in the matter of proceedings for liquidation by arrangement or composition with creditors, instituted by \_\_\_\_\_ of \_\_\_\_\_, and will be paid by \_\_\_\_\_ at \_\_\_\_\_ on and after \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ between the hours of \_\_\_\_\_ and \_\_\_\_\_  
Trustee.  
s 2

## APPENDIX V.

No. 175.

*Summons of Debtors to Estate.*

THE BANKRUPTCY ACT, 1869.

*Practice,*  
*pp. 1375*  
*et seq.*

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith. To [name, address, and occupation of witness] greeting—we command you, that all things set aside and ceasing every excuse you be and appear in your proper person before the Chief Judge of the London Bankruptcy Court at Basinghall Street, in the City of London, on the       day of       , 187       , by       of the clock in the       noon of the same day; and also that you bring with you, and produce at the time and place above-mentioned, all ledgers, and books of account, invoices, statements of account, letters, books, papers, and documents of every kind, in any manner relating to your dealings and transactions with       , a bankrupt [*if liquidating debtor, strike out a bankrupt and insert a liquidating debtor*], and to testify the truth according to your knowledge in the matter of a certain bankruptcy [*if liquidation, strike out bankruptcy and insert liquidation*] petition now in our London Bankruptcy Court aforesaid presented by       against       touching a debt alleged to be due by you to the said bankrupt's [*strike out bankrupt's and insert liquidating debtor's*] estate amounting to the sum of £       on the part of the trustee of the property of the said       , and at the aforesaid day in the said matter; and hereof fail not at your peril.

Given under the seal of our London Bankruptcy Court the       day of       , 187       .

Registrar.

NOTE.—*This summons is issued on the application of       , the solicitors for and on behalf of the said       , and take notice that if the sum of £       stated to be due by you to this estate be paid to the said       at       on or before the       day of       , 187       , this summons will be discharged.*



## APPENDIX VI.

### THE BANKRUPTCY ACT, 1869.

#### SCALE OF ATTORNEYS' COSTS.

##### *Petitioning Creditor's Bill of Costs to the Appointment of Trustees.*

	£	s.	d.
Instructions for petition . . . . .	1	0	0
Examining witnesses as to trading, where necessary . . . . .	0	10	0
Ditto as to act of bankruptcy . . . . .	0	10	0
Examining particulars of petitioning creditor's account . . . . .	0	6	8
<p>The act of bankruptcy being a declaration admitting inability to pay, filed by the attorney to the petitioner, or an assignment prepared by the attorney to the petitioner, or default made upon a debtor's summons issued by the attorney to the petitioner, these two last charges will not be allowed. The expense of an assignment will not be allowed where a declaration of inability would answer the purpose.</p>			
If attorney reside at a distance:—			
Writing agent to search for prior petition . . . . .	3s.	6d.	
Agent's writing result of search . . . . .	3s.	6d.	
Searching, if prior petition filed . . . . .	0	7	8
Drawing bankruptcy petition, including order for hearing . . . . .	0	10	0
If exceeding 10 folios, a shilling a folio.			
Ingrossing same, 4d. per folio only to be allowed where the petition exceeds seven folios.			
Paid for stamp and parchment . . . . .	5	1	0
Attesting signature of each petitioner, except in case of partnership . . . . .	0	6	8
Drawing and fair copy affidavit verifying petition . . . . .	0	3	4
Attending petitioner to be sworn . . . . .	0	6	8
Paid oath (if paid) . . . . .			
Two copies of petition for sealing, 4d. per folio.			
Preparing subpoena and serving witnesses, or arranging with witnesses for their attendance on presentation of petition . . . . .	0	13	4
Paid them . . . . .			
See Witnesses' Scale. Petitioning creditor is not to be regarded as a witness, and is not to be paid for loss of time; he may claim his expenses of travelling and subsistence.			
Attending on presentation of petition when Court investigated statements therein, and clerk . . . . .	1	0	0
<p>One fee only for attending will be allowed, unless by direction of the Court at the time, and a memorandum of its allowance produced to the taxing officer.</p>			

Drawing declaration for inability to pay . . . . .  
Attending attesting . . . . .  
Paid stamp . . . . .  
Attending filing . . . . .

*Where Act of Bankruptcy is an Assignment for  
(to be allowed only by special Order of t.*

Instructions for assignment . . . . .  
Drawing same . . . . .  
If above 1s. per folio.  
Fair copy, per folio 4d.  
Paid stamp and paper, if stamped . . . . .  
Attending execution, each assigning party . . . . .

*Cost of Debtor's Summons.*

Instructions for affidavit of debt, and for debtor's summo  
Affidavit of debt, and for copy . . . . .  
Particulars of demand (three copies) at 4d. per folio.  
Attending swearing each deponent . . . . .  
Paid oath (if paid) . . . . .  
Attending filing . . . . .  
Paid for office copy . . . . .  
Summons and two fair copies and particulars . . . . .  
Attending sealing summons, copies and particulars . . . . .  
Paid stamp . . . . .  
Service of summons . . . . .  
Attending Court on hearing of summons . . . . .

*Costs where the Debtor is required by the Court to*

Attending making inquiries as to sufficiency of sureties  
This charge will be subject to increase, according  
of the sureties' residence; and, where necessary,  
for making such inquiries.  
Drawing exceptions to sureties . . . . .  
Service thereof on debtor's attorney . . . . .  
Attending Court when sureties allowed or disallowed . . . . .

# BANKRUPTCY COSTS.

	£	s.	d.
Affidavit of denial of debt . . . . .	0	2	6
Paid stamp . . . . .	0	1	0
Attending Court on hearing of summons, and drawing up order . . . . .	0	13	4
Attending for appointment to tax, and copy and service of order and appointment . . . . .	0	5	0
Attending taxing . . . . .	0	6	8
Paid allocatur stamp . . . . .			

## *Costs of Application to prosecute a Petition in a particular District, or to transfer Petition from one District to another.*

Instructions for affidavit to ground application . . . . .	0	6	8
Drawing same, 1s. per folio.			
Fair copy, 4d. per folio.			
Attending deponent to be sworn . . . . .	0	6	8
Paid oath . . . . .			
Attending Court when order made, and drawing up same . . . . .	0	13	4

## *Costs on Application for Warrant.*

Instructions for affidavit in support of application for warrant . . . . .	0	6	8
Drawing same, per folio 1s.			
Fair copy, per folio 4d.			
Attending to read over and to get same sworn . . . . .	0	6	8
Attending Court, warrant granted . . . . .	0	13	4
Fair copy, per folio 4d.			
Attending officer, instructing him as to the execution of the warrant . . . . .	0	6	8

## *Costs of disputing Statements in Petition.*

Attending debtor served with copy of petition, taking instructions to show cause against same . . . . .	0	6	8
Drawing notice showing cause . . . . .	0	5	0
Two fair copies for service . . . . .	0	2	0
Service on creditor, including postage . . . . .	0	3	6
Ditto registrar . . . . .	0	3	6
Perusing and considering petition . . . . .	0	6	8
Examining witnesses in opposition . . . . .	0	10	0
Costs of brief, and counsel's fee, where requisite to employ counsel.			
Attending Court . . . . .	1	0	0

## *Petitioning Creditor's Costs on Bankrupt disputing Statements in Petition.*

The debtor having served notice of disputing the statements in petition, attending petitioner . . . . .	0	6	8
Special attendances will be allowed to examine witnesses as to the facts they can prove, the charges for which, and for summoning them, will be in the discretion of the taxing officer, according to the circumstances; and where necessary to employ counsel to support the petition, the usual charges for brief and counsel's fees will be allowed.			
Attending Court when adjudication made . . . . .	1	0	0

## *Costs for substituted Service where Debtor keeps out of the way to avoid Service.*

Several attendances to serve without effect, when it appearing that the debtor was keeping out of the way, and could not be personally served, instructions to apply for substituted service . . . . .	0	6	8
Drawing affidavit of facts, and that due pains had been taken to effect personal service, per folio 1s.			
Fair copy, 4d. per folio.			
Attending Court for order for substituted service, and drawing up order . . . . .	0	13	4

## APPENDIX VI.

### *Costs of Brief.*

	£	s.	d.
Instructions for brief in discretion of taxing officer . . . . .			
(Allowed only when counsel employed.)			
Drawing same, 1s. per folio.			
Fair copy, 4d. per folio.			
Fee to counsel and clerk . . . . .			
Attending him . . . . .	0	6	8
Where consultation or conference is necessary, attending to appoint same . . . . .	0	6	8
Fee to counsel and clerk . . . . .			
Attending consultation or conference . . . . .	0	13	4

### *Costs of Cases for Opinion of Counsel.*

Instructions for case . . . . .	0	6	8
Drawing same, 1s. per folio.			
Fair copy, 4d. per folio.			
Fee to counsel and clerk . . . . .			
Attending him . . . . .	0	6	8
Where conference is necessary attending to appoint same . . . . .	0	6	8
Fee to counsel and clerk attending conference . . . . .	0	13	4
Attending for and perusing opinion . . . . .	0	6	8
Attending client, reading over opinion, and conferring with him thereon . . . . .	0	6	8

### *Costs of Motion.*

Instructions . . . . .	0	6	8
Where on appeal . . . . .	0	13	4
Drawing notice of motion to be served, per folio 1s.			
Fair copies, 4d. per folio.			
Perusing documents (by London agent) in an appeal, from 1l. 1s. to 2l. 2s.			
Making short note of motion, and attending registrar therewith, previously to the sitting of the Court . . . . .	0	3	4
Instructions for affidavit in support of motion . . . . .	0	6	8

[No instructions allowed where the attorney or his clerk makes the affidavit; no fees allowed to counsel to settle affidavit, unless very special.]

Drawing same, at per folio 1s.

## BANKRUPTCY COSTS.

### GENERAL RULES.

	£	s.	d.
1. More than one attendance at presentation or hearing of bankruptcy petition will not be allowed unless ordered by the Court, and memorandum be obtained to that effect.			
2. Attendance upon the Court for necessary purposes not included in the foregoing scale, each	0	6	8
Attending Court on each sitting (including presentation and hearing of petition)	1	0	0
If by agent	2	0	0
Clerk's attendance at each sitting, when required	0	5	0
3. Service of petition, summons, order, notice, or other process, each service	0	5	0
If the distance be more than three miles, <i>5d.</i> per mile extra, or a further sum, in the discretion of the taxing officer, according to circumstances.			
In cases of great distance, the service must be by agent, unless otherwise sanctioned.			
4. Drawing and copy bill of costs, per folio	0	0	4
5. General attendances, each	0	6	8
Long and special attendances	0	13	4
(Or more, in the discretion of the taxing officer.)			
6. Writing letters, each, special	0	5	0
Ditto, common	0	3	6
7. Circular letters, if above twenty, each	0	1	0
If numerous, they must be printed.			
8. Attendances to insert advertisements	0	3	4
9. Extra allowances for length of sittings, or other increased allowances must have the sanction of the Court, and a memorandum to that effect obtained, or all such charges will be disallowed.			
10. Vouchers must be produced on taxation for all payments, or they will be disallowed.			
11. Bills of costs must be written lengthwise, on one side only, and dates must be furnished to each item, such dates not to be written in the margin, which is to be left clear for taxation.			
12. In special cases, where counsel are not instructed to appear in Court, a charge by the attorney for the preparation of minutes of fact or evidence for his own use may be allowed.			

N.B.—Other matters not herein provided for may be allowed on a similar scale, as nearly as may be, or in accordance with the practice of the Superior Courts, according to the nature of the proceeding.

1. Bankers, merchants, esquires, and gentlemen
2. Professional men . . . . .
3. Auctioneers and accountants . . . . .
4. Notaries . . . . .
5. Engineers and surveyors . . . . .
6. Clerks of attorneys or other persons . . . . .
7. Master tradesmen, shopkeepers, yeoman farmer
8. Artizans, mechanics, &c. . . . .
9. Females, according to station in life . . . . .
10. Police inspector . . . . .
11. Police constable . . . . .

The travelling expenses of the first five classes witnesses will be allowed at the rate of 7*d.* per mile, and the others at 5*d.* per mile one way where no railway is available, or travelling expenses actually incurred, in the discretion of the taxing officer; the travelling expenses female witnesses, 7*d.*, or 5*d.*, according to the station.

Governors of gaols bringing up prisoners . . . . .

Travelling expenses of gaoler bringing up prisoner under warrant, in addition to the above allowance, 7*d.* per mile one way for each (himself and prisoner), or the amount actually paid, as for the prisoner's safe custody and refreshment in the discretion of the taxing officer.

The following charges to the end are to be submitted with the consent of the committee of inspection, or

## BANKRUPTCY COSTS.

### *Auctioneer's Charges, including all Expenses of Sale.*

£ s. d.

**Sales by auction of goods, chattels, and effects:—**

10 <i>l.</i> per cent. on the first 100 <i>l.</i>	
After to . . . 1,000 <i>l.</i>	5 <i>l.</i> per cent.
After to . . . 5,000 <i>l.</i>	2 <i>l.</i> 10 <i>s.</i> per cent.
After to . . . 10,000 <i>l.</i>	1 <i>l.</i> 5 <i>s.</i> per cent.

If the above be sold by valuation, 2*l.* 10*s.* per cent. on the first 1,000*l.*, and 1*l.* 5*s.* per cent. beyond.

**Sales by auction of estates, freehold, leasehold, &c.:—**

5 <i>l.</i> per cent. on the first 300 <i>l.</i>	
After to . . . 1,000 <i>l.</i>	2 <i>l.</i> 10 <i>s.</i> per cent.
After to . . . 5,000 <i>l.</i>	1 <i>l.</i> per cent.
After to . . . 10,000 <i>l.</i>	10 <i>s.</i> per cent.

If the above be sold by valuation, half the above charges; and if not sold, the expenses to be paid, and fee to the auctioneer to be allowed as agreed with the trustee, or at the discretion of the taxing officer; or if bought in, and subsequently sold by private contract, by the negotiation of the auctioneer, half the above charges on sales by auction.

**Farming stock** 5*l.* per cent. on the first 100*l.*, and 2*l.* 10*s.* on the remainder.  
When sold by valuation, half the above charges.

### *Costs of Surveys, Dilapidations, and Specifications.*

From 2*l.* to 5*l.* in discretion of taxing officer.

### *Sales of Stock by Tender.*

Not above 400 <i>l.</i>	4 <i>l.</i> per cent.
After to 1,000 <i>l.</i>	3 <i>l.</i> 10 <i>s.</i> per cent.
After to 2,000 <i>l.</i>	2 <i>l.</i> 10 <i>s.</i> per cent.
After to 5,000 <i>l.</i>	2 <i>l.</i> per cent.
Above 5,000 <i>l.</i> and upwards	1 <i>l.</i> 15 <i>s.</i> per cent.

Expenses to be allowed, such as advertisements and printing, not exceeding 2*l.*, or at the discretion of the taxing officer.

### *Accountant's Charges.*

For preparing balance-sheet, investigating accounts, &c., principal's time, per day of eight hours, including necessary affidavit	2	2	0
Chief clerk's time	1	1	0
Other clerk's time, per day of eight hours	}	0	10
		to	6
These charges to include stationery.		0	15
			0

These charges to include stationery.

HATHERLEY, C.  
JAMES BACON,

Chief Judge in Bankruptcy.

1st January, 1870.

**SCALE OF ATTORNEY'S COSTS OF PROCEEDINGS FOR LIQUIDATION BY ARRANGEMENT, UNDER SECTION 125, CP TO APPOINTMENT OF TRUSTEE.**

—•—

(The taxing officer will exercise a fair discretion as to the allowance of preliminary or other charges connected with the debtor's failure and any steps taken to protect the estate for the general benefit of creditors, subject to order of Court or resolution of creditors.)

	£	s.	d.
Instructions for petition . . . . .	1	0	0
Attending searching if bankruptcy petition filed . . . . .	0	6	8
Paid search . . . . .	0	1	0
Drawing and engrossing petition . . . . .	0	10	0
Paid stamp and parchment . . . . .	1	1	0
Attesting signature of (each) petitioner . . . . .	0	6	8
Drawing and fair copy affidavit verifying petition . . . . .	0	3	4
Attending petitioner to be sworn . . . . .	0	6	8
Paid oath and exhibit on petition where necessary . . . . .	0	2	6
Paid stamp . . . . .	0	1	0
Attending petitioner as to the nature of his liabilities and as to addresses of his creditors and preparing certificate as to place of meeting . . . . .	0	6	8
Attending Court on presentation of petition, and filing same and affidavit . . . . .	1	0	0
If by agent . . . . .	2	0	0

[In special cases attorney's journey may be charged where resident at a distance from the Court.]



# BANKRUPTCY COSTS.

	£	s.	d.
tendances on debtor and obtaining his signature thereto; if prepared by an accountant, perusing and considering statement, and attendances on debtor and accountant thereon.]			
Attending meeting, self and clerk . . . . .	1	5	0
If by agent . . . . .	2	5	0
[A double or longer sitting will only be allowed where certified for by the chairman, and approved by the taxing officer. In special cases attorney's journey may be charged where resident at a distance from the place of meeting.]			
Fee for examining and exhibiting proofs, comparing and completing resolutions with proxies, &c., and (where necessary) obtaining signatures of creditors subsequently to the meeting. <i>Rule 275 of 1870</i> . . . . .			
[Where any special circumstances, drawing resolutions or deed for carrying same into effect, and fees to counsel to settle may be allowed.]			
Drawing and fair copy affidavit, verifying resolutions, statement, proofs, and proxies, produced at meeting and of appointment of chairman . . . . .	0	6	8
Attending swearing . . . . .	0	6	8
Paid oath (where necessary) and stamp . . . . .	0	2	6
Drawing affidavit as to value of assets . . . . .	0	6	8
Attending swearing . . . . .	0	6	8
Paid oath (where necessary) and stamp . . . . .	0	2	6
Attending registrar on application to register special resolution . . . . .	1	5	0
If by agent . . . . .	2	5	0
Paid <i>ad valorem</i> stamp duty on resolution . . . . .			
[In country cases paid for office copy resolutions to be sent to London Court.]			
Drawing and two fair copies certificate of trustee's appointment . . . . .	0	6	8
Attending obtaining registrar's signature and seal of the Court thereto . . . . .	0	6	8

## Where Resolutions objected to.

Attending obtaining appointment for registration . . . . .	0	6	8
Drawing notice of intention to register and fair copy . . . . .	0	5	0
Copy and service of notice (each) . . . . .	0	5	0
Drawing affidavit of service and copy notice to annex . . . . .	0	6	8
Paid oath and stamp . . . . .	0	2	6
Attending swearing affidavit and filing . . . . .	0	6	8
Attending registrar on hearing of application and drawing order . . . . .	0	13	4
[Any additional charges to be certified by registrar at time of hearing application.]			

## Where Receiver appointed.

Instructions for application for appointment of receiver . . . . .	0	6	8
Drawing and fair copy application . . . . .	0	5	0
Stamp thereon . . . . .	0	5	0
Drawing affidavit in support of application . . . . .	0	6	8
Attending swearing . . . . .	0	6	8
Paid oath and stamp . . . . .	0	2	6
Drawing affidavit of responsibility . . . . .	0	6	8
Attending swearing . . . . .	0	6	8
Paid oath and stamp . . . . .	0	2	6
Attending Court on application, order made . . . . .	0	13	4
[The attendance of counsel is not to be allowed unless sanctioned by the Court at the time of application for receiver.]			
Drawing order, and two fair copies, and obtaining registrar's signature, and passing . . . . .	0	6	8

drawing and engrossing order and passing  
Notice of injunction, copy and service (each)  
[Where possible the application for receipt  
to be made at one and the same sitting  
allowed by the taxing officer according

*Injunction*

Instructions for notice of motion for (or to compel)  
Drawing same, 1s. per folio . . . . .  
Fair copies, 4d. per folio . . . . .  
Drawing affidavit and copy . . . . .  
Attending swearing . . . . .  
Paid oath and stamp . . . . .  
Copies affidavits to accompany notice, 4d. per  
Service of notice and copies affidavits (each set)  
[Costs of Brief.—See scale of costs under  
1870."]

Attending Court on application for (or for costs)  
Drawing order, 1s. per folio . . . . .  
Fair copy, 4d. per folio . . . . .  
Attending passing . . . . .  
Paid for office copies . . . . .  
Service of order (each service) . . . . .

[Where more than one injunction (interdict)  
for or granted, the taxing officer is to estimate  
more than one set of costs is to be allowed  
tations are not to be made unnecessarily  
restrained relate to a claim not exceeding  
allowed on the lower scale in respect of  
standing that the debts exceed 750*l*.  
R. 8 of 1871.]

## BANKRUPTCY COSTS.

### *Debtor's Discharge (where granted).*

	£	s.	d.
Drawing report of trustee to registrar and engrossing . . . . .	0	10	0
Attending obtaining trustee's signature . . . . .	0	6	8
Attending filing and obtaining registrar's certificate thereto . . . . .	0	6	8

As to matters not specifically provided for and subsequent to the appointment of a trustee, the taxing officer will be guided by the scale of attorney's costs under "The Bankruptcy Rules, 1870," and the general practice in bankruptcy.

HATHERLEY, C.  
JAMES BACON, Chief Judge.

7 July, 1871.



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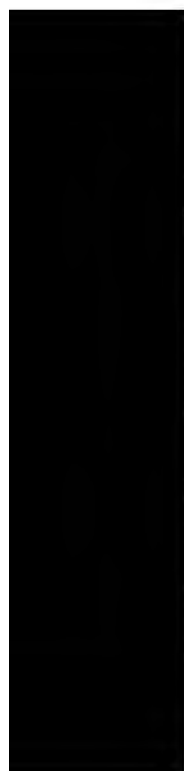
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